

AN
ARGVMENT
DELIVERED

BY
PATRICKE DARCY ESQVIRE,

By the expresse order of the House of
Commons in the Parliament of

IRELAND, 9. Jan^y. 1641.



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5. Iunii, 1641.

By the Commons House of IRELAND in
Parliament assembled.

FOrasmuch as M. PATRICKE DARCY, by a former order of this House, was appointed Prolocutor, at the Conference with the Lords, touching the Questions propounded to the Iudges, and their pretended answers to the same; It is hereby ordered, and the said M. DARCY is required, to declare and set forth, at the said Conference; the manifold grievances, and other causes and grounds that moved this House, to present the said Questions to the Lords House, to be propounded as aforesaid, and to give particular reasons for every of the said Questions.

Copia vera.

Extract. per Phil. Fern. Cleric. Parl. Com.



AN
 ARGUMENT
 DELIVERED
 BY
 PATRICKE DARCY
 ESQUIRE,

By the expresse orders of the Commons-House of the Parliament of Ireland; at a conference with a Committee of the Lords House, in the dyning roome of the Castle of Dublin, 9. Die Iunij 1641. upon certaine Questions propounded to the Iudges of Ireland in full Parliament; and upon the answers of the said Iudges to the said Questions.

And in the conclusion, a declaration of the Commons House upon the said Questions.

THE QUESTIONS.

Questions, Wherein the House of Commons humbly desired, that the House of the Lords would be pleased to require the Iudges to deliver their resolutions.

IN asmuch as the Subjects of this kingdome, are free, loyall, and dutifull Subjects to his most Excellent Majesty their naturall Liege, Lord & King;

And to be governed only by the Common Lawes of England, & Statutes of force in this kingdome, in the same manner & forme, as his Majesties Subjects of the kingdome of England, are and ought to be governed, by the said Common Lawes, and Statutes of force in that kingdome; which of right the Subjects of this kingdome doe challenge, and make their protestation to be their birth-right, and best inheritance; yet, in asmuch as the unlawfull actions and proceedings of some of his Majesties Subjects, & Ministers of Iustice of late yeares, introduced and practised in this kingdome, did tend, to the infringing and violation of the lawes, liberties, and freedome, of the said Subjects of this kingdome, contrary to his Majesties Royall and pious intentions. Therfore the Knights, Citizens and Burgeses in Parliament assembled, not for any doubt, or ambiguity, which may be conceived, or thought of, for, or concerning the premisses, nor of the ensueing questions, but for manifestation and declaration of a cleere truth, and of the said Lawes and Statutes already planted, and for many ages past, settled in this kingdome. The said Knights, Citizens and Burgeses, doe therefore pray the House of the Lords may bee pleased to command the Iudges of this kingdom; forthwith,

to

to declare in writing their resolutions of and unto the ensuing Questions, and subscribe to the same.

1. Whether the Subjects of this kingdome be a free people, and to be governed, only, by the Common Lawes of England, and Statutes of force in this kingdome?

2. Whether the Iudges of this Land doe take the oath of Iudges, and if so, whether under pretext of any Act of State, Proclamation, Writ, Letter, or Direction, under the great, or privie Seale, or privie Signet, or Letter, or other Commandment from the Lord Lieutenant, Lord Deputy, Iustice, Iustices, or other Chiefe Governor, or Governors of this kingdome; they, may hinder, stay, or delay, the suite of any Subject, or his Iudgment, or execution thereupon; if so, in what Case, and whether, if they doe hinder, stay or delay, such Suite, Iudgment or Execution thereupon, what punishment doe they incurre for their deviation and transgression therein?

3. Whether the Kings Majesties privie Council, either with the Chiefe Governor, or Governors of this kingdome, or without him or them be a place of Iudicature, by the Common Lawes, and wherein; Causes betweene partie and partie, for

for debts, trespasses, accompts, possession, or title of land, or any of them may be heard and determined, and of what Civill Causes they have Iurisdiction, and by what law, and of what force is their order or decree in such Cases, or any of them?

4. The like of the chiefe Governors alone.

5. Whether grants of Monopolies be warranted by the Law, and of what, and in what cases, and how, and where, and by whom are the pretended transgressors against such grants punishable, and whether by fine, mutillation of members, imprisonment, losse and forfeiture of goods or otherwise, and which of them?

6. In what Cases the Lord Lieutenant, Lord Deputy, or other Chiefe Governor, or Governors, of this kingdome, and Councell; may punish by fine, imprisonment, mutillation of members, pillorie, or otherwise, and whether they may sentence any to such, the same, or the like punishment for infringing the Comands of, or concerning any Proclamations, or Monopolies, and what punishment doe they incurre that vote for the same?

7. Of what force is an Act of State, or proclamation, in this kingdome, to bind the libertie, goods, possession, or inheritance of the Natives thereof;

thereof, whether they or any of them can alter the Cōmon Law, or the infringers of them loose their goods, chattells, or leases, or forfeite the same, by infringing any such Act of State, Proclamation, or both, and what punishment doe the sworne Iudges of the Law that are Privy Councillors incurre that vote, for such Acts, and execution thereof?

8. Are the Subjects of this kingdome subject to the Marshall law, and whether any man in time of peace, no enemy being in the field with Banners displaied, can be sentenced to death, if so, by whom, and in what Cases, if not, what punishment doe they incurre, that in time of peace execute Marshall law?

9. Whether voluntary oathes taken freely before Arbitrators for affirmance, or disaffirmance of any thing, or the true performance of any thing be punishable in the Castle Chamber, or in any other Court, and why, and wherefore?

10. Why, and by what law, or by what rule of policie is it that none is admitted to reduction of fines, and other penaltie in the Castle Chamber, or Councill-Table, untill he confesse the offence for which he is censured, when as *Revera* he might be innocent thereof, though suborned.

ned proofes or circumstance might induce a cen-
sure?

11. Whether the Iudges of the Kings Bench, or any other Iudges of Gaole delivery, or of any other Court, and by what law doe, or can deny the copies of Indictments of Felony, or Treason, to the parties accused contrary to the lawes?

12. What power hath the Barons of the Court of Exchequer; to raise the respite of homage, arbitrarily, to what rate they please, to what value they may raise it, by what law they may distinguish betweene the respite of homage upon the diversitie of the true value of the fees, when as *Escuage* is the same, for great and small fees, and are proportionable by Parliament?

13. Whether it be censurable in the Subjects of this kingdome, to repaire unto England, to appeale to his Majestie for redresse of injuries, or for other lawfull occasions, if so, why, and in what condition of persons, and by what law?

14. Whether Deanes or other dignitaries of Cathedrall Churches be properly, and *de mero jure* Donative by the King, and not Elective or Collative, if so, why & by what law, & whether the confirmation of a Deane *de facto* of the Bishops grant be good & valid in law or no, if not by what law?

15. Whether

15. Whether the issuing of *Quo-warrantoes* out of the Kings Bench, or Exchequer, against Burroughes that anciently and recently sent Burgeses to the Parliament, to shew cause why they sent Burgeses to the Parliament, be legall, or if not, what punishment ought to be inflicted upon those, that are, or hath been the occasioners, procurers, and Iudges of, and in such *Quo-warrantoes*?

16. By what law are Iurors that give verdict according to their conscience, and are the sole Iudges, of the fact, censured in the Castle-Chamber, in great fines, and sometimes pillored with losse of eares, & boared through the tongue, and marked sometimes in the forehead, with a hot iron, and other like infamous punishment?

17. By what law are men censurable in the Castle-Chamber, with the mutillation of members, or any other brand of infamy, and in what causes, and what punishment in each case there is due without respect of the qualitie of the person or persons?

18. Whether in the Censures in the Castle-Chamber regard be to be had to the words of the great Charter (*viz*) *salvo contenemento, &c*?

19. Whether if one that steales a sheepe, or commit any other felony, & after flyeth the course

of Iustice, or lyeth in woods or mountaines upon his keeping, be a traytor, if not, whether a Proclamation can make him so?

20. VWhether the testimony or evidence of Rebels, Traytors, protected theeves, or other infamous persons, be good evidence in law to be pressed upon the tryalls of men for their lives, or whether the Iudge or Iurors ought to be Iudge of the matter in fact?

21. By what law are Fayres and Markets to be held in Capite, when no other expresse tenure be mentioned in his Majesties Letter-Patents, or grants of the same Fayres and Markets, although the rent or yearely summe be reserved thereout.

Copia vera.

Extract. per Phil. Fern. Cleric. Parl. Com.



THE



THE
A N S W E R
 AND
DECLARATION
 OF THE IVDGES,

*Vnto the questions transmitted from the Honorable
 House of Commons unto the Lords Spirituall and
 Temporall in Parliament assembled, whereun-
 to they desired their Lordships, to require
 the said Iudges answers in writing
 forthwith. May 25. 1641.*

IN all humbleness the said Iudges doe desire, to
 represent unto your Lordships, the great sence
 of griefe that they apprehend out of their feare,
 that they are false from that good opinion, which
 they desire to retayne with your Lordships and

the said house of Commons in that (notwithstanding their humble petition and reasons to the contrary exhibited in writing, and declared in this most honorable house) your Lordships have over-ruled them, and often commanded their answers unto the said *Questions*, although they have informed your Lordships, and still with assurance doe averre, that no president in any age can be shewen that any Iudges before them were required or commanded to give answer in writing, or otherwise unto such generall, or so many *questions*, in such a manner in Parliament, or elsewhere, unlesse it were in that time of *King Richard* the 2^d. which they humbly conceive, is not to be drawne into example. And therefore they yet humbly supplicate your Lordships so farre, to tender their profession and places, and their relation, to his Majesties service, as to take into your serious considerations, the reasons that they have annexed to this their answer, before their answer be entered, or admitted, among the Acts of this high Court, and that if your Lordships in your wisdomes, shall after thinke fit to give any Copies of their Answers, that for their Iustification to the present and succeeding times your Lordships will be pleased to require the Clerke of this most honorable House, that no Copies
may

may be given of the said answers without the said reasons.

2. Secondly the said Iudges humbly desire your Lordships to be pleased, to be informed, that the words in his Majesties writs, by which they are commanded to attend in Parliament, are, that the said Iudges shalbe present with the Lords-Iustices or other chiefe Governor and your Lordships, at the said Parliament, called *Pro arduis & urgentibus regni negotijs super dictis negotijs tractaturi & consilium suum impensuri*: And they desire your Lordships to take into your consideration whether any advice may be required by your Lordships, from them, but concerning such particular matters, as are in treaty and agitation and judicially depending before your Lordships, upon which your Lordships may give a judgement, order, or sentence, to be recorded among the Records and Acts of this honorable House, and whether they may be commanded by your Lordships, to subscribe their hands unto any opinion or advice they shall give upon any matters in debate before your Lordships there, and whether your Lordships can conceive any finall resolution upon the matters contayned in the said Questions.

3. Thirdly, although the said questions are
but

but twenty two in number, yet they say, that they
 conayne at least fifty generall questions, many of
 them of severall matters, and of severall natures,
 within the resolution of which most of the great
 affaires of this kingdome, both for Church and
 Common-wealth, for late yeares may be included;
 and therefore the said Iudges do openly aforehand
 professe, that if any particular, that may have Re-
 lation to any of those questions shall hereafter
 come judicially before them, and that cyther up-
 on argument or debate (which is the sive or fann
 of truth) or discovery of any generall inconve-
 nience, to the King or Common-wealth in time
 (which is the mother of truth) or by further search
 or information, in any particular, they shall see
 cause, or receive satisfaction for it, they will not be
 concluded by any answer, they now give to any of
 these generall questions: but they will upon bet-
 ter ground and reason with their predecessors the
 Iudges in all ages with holy Fathers, Councils,
 and Parliaments, retract, and alter their opinion
 according to their conscience and knowledge, and
 the matter and circumstances of the cause as it
 shall appeare in judgement before them, it being
 most cerryne that no generall case, may be so put,
 but a circumstance in the matter or manner may
 alter

alter a resolution concerning the same.

4. *Fourthly*, the succeeding Iudges, and age notwithstanding any answer given by the now Iudges, may be of another opinion then the now Iudges are, without disparagment to themselves, or the now Iudges, in regard that many particular circumstances, in many particular cases may fall out, that may alter the reason of the Lawes, in such a case, which could not be included or fore-seene in a generall question, or answer thereunto: And therefore they desire your Lordships to consider of what use such answers may be, to the present and future times.

5. *Fifthly*, many of the said questions, as they are propounded (as the said Iudges humbly conceive) doe concerne his Majesty in a high degree, in his Regall and prerogative power, in his Government, in his Revenue, in the Iurisdiction of his Courts, in his Martiall affaires, and in his Ministers of State, so that the said Iudges considering their Oathes, & the duty which by their places they owe unto his Majesty humbly conceive they may not with safety give answer thereunto, without speciall licence from his Majesty, and therefore they still humbly pray your Lordships (as formerly they did) not to presse any answers from

from them untill his Majesties princely pleasure, therein be signified.

6. *Sixtly*, if the matters of these questions which ayme at some abuses of former times, were reduced into Bills, they conceive it were the speedy way to have such a reformation which might bind the present times, and posteritie, and in such proceeding they ought and would most cheerefully contribute their opinions & best endeavors, but in such a course (as they apprehend it) which points at punishment they have reason to bee sparing in giving any opinion further then the duty of their places doth command from them.

7. *Seventhly*, although it may be conceived, that the answering of such and so many generall questions, by the now Iudges may contribute some helpe to the reformation now so much desired, yet no man knoweth but this new president in propounding of such questions to Iudges in succeeding times (as the Iudges & frame & constitution of the Common-wealth may be) may fall out to bee most prejudiciall to the State and Common-wealth.

8. *Eighthly*, most of the matters in severall of the said questions, are already by your Lordships and the said house of Commons voted and
repre-

represented to his Majesty for grievances, and therefore no opinions of the Iudges, under favour are needfull or to bee required thereunto, unlesse the same shall come in further agitation and discussion in this honorable House.

9. The Iudges opinions are not usually called upon in Parliament, but when upon debate great and difficult points in Law doe arise, where, this most honorable house doth thinke fit to command their opinions, but no resolutions, doe belong unto the said Iudges, in Parliament, but unto your Lordships; Yet in the front and preample of the said questions, the resolution of the said questions by the Iudges, is forthwith desired, to be required by your Lordships in writing, although the first question, *viz.* Whether the subjects of this kingdome be a free people, &c. be positively, resolved by the preamble to the said questions, in which it is likewise declared that the said Iudges answers thereunto, are not desired for any doubt or ambiguitie which may be conceived or thought of, for, or concerning the premisses, nor of the said questions; but for manifestation and declaration of a cleere truth, and of the Lawes and Statutes already planted and settled in this kingdome: And they say that it is impossible, to make any

manifestation or declaration of Law, or statutes, which may hold or be usefull, upon such generall questions as most of these are, namely. By what Law? in what cases? of what? and which of them? of what power? of what force? how? where? by whom? why? wherefore? what punishment? by what rule of policy? in what condition of persons? in regard that the next succeeding Iudges may be of another opinion, and that a circumstance may alter the reason of this Law, in many particular cases, which the wit of man is not able to foresee, or give a generall rule in. And they say that to give answers unto such questions as might give any satisfaction to your Lordships, or to the honorable house of Commons, would make up a great volume, and require more time than your Lordships have afforded unto the said Iudges, considering their great toyle, in their Circuites the last short vacation, their other employments in the Common-wealth, and their daily attendance on your Lordships in Parliament, and the ordinary Courts of Iustice: And yet least they might seeme to come any way short in performance of that duty, which they confesse to be due unto your Lordships, or be wanting in promoting or advancing the Common-wealth, which they beleeve to be aymed at by
the

the said questions, though it may seeme to drawe damage or prejudice upon their particulars, they doe in all humblenesse present unto your Lordships, the ensuing answers unto the said questions which is as much as by their Oathes or in the duty they owe unto his Sacred Majesty (before his princely pleasure bee therein signified) they can answer thereunto.

1. To the first, they answer, that the subjects of this kingdome are a free people and are, for the generall to bee governed onely by the Common-lawes of *England* and statutes of force in this kingdome, yet they say that as in *England*, many statutes are growen *obsolete*, and out of use, and some particular ancient Lawes (aswell in criminall as in Civill causes) have beene changed by interpretation of the Iudges there, as they found it most agreeable to the generall good of the Commonwealth, and as the times did require it; So, our predecessors the Iudges of this kingdome as the necessitie of the times did move them, did declare the law in some particular cases otherwise than the same is practised in *England*, which the now Iudges cannot alter, without apparent diminution of a great part of his Majesties standing revenue, and opening a gap for the shaking and questioning of

the estates of many of his Majesties subjects, and the overthrowing of severall Iudgements, Orders, Decrees, which depend thereupon. For example, If it be found by office of Record, sufficient for forme that a man was killed in actuall rebellion, and at the time of his death was seized of lands, hereditaments, goods, or chattels, by the constant declaration of Law, and practise of former times here, the Crown was intituled to such lands, goods, and chattels, and many mens estates depend thereupon, and yet the law is not so taken in *England*, So if one or more commit Felony, and then stand out upon his or their keeping, and hee or they will not submit themselves to be tryed by the law, but being in that state doe robbe or spoyle and terrifie his Majesties people, wherby the countrie is disquieted, this by the constant opinion of our predecessors in this kingdome hath beene adjudged a leavying of warre within the *Statute 25. Edw. 3.* and so consequently treason. Also by the common received opinion & practise in this kingdome, the *Wife* is to have a third of all the goods, chatels and credits of her husband (the debts being payed) although he dispose of all by his will from her: And yet the constant practise is otherwise in *England*, and other instances of that kind, might

might be made, so that the words (onely) must receive a benigne exposition before the first question can receive a generall answer, in the affirmative. Secondly, many causes of great weight and consequence in this kingdome, are to bee decreed and ordered by equitie in the proper Courts of equitie, and in course of State at the Councell-board, and by particular customes, and contrary to law, for which the Common-law and statutes of force in this kingdome give no remedie. Thirdly, there are severall other lawes of force in *England*, and *Ireland* so farre as they have been received, which though some would have to be part of the Common-law of *England*, yet we find them particularly distinguished from it in our Printed Bookes in Parliament Rolles in *England*, as *Lex est consuetudo Parliamenti*, *jura belli*, Ecclesiasticall or Canon law in certaine cases, Civill law in some cases not onely in Ecclesiasticall Courts, but in the Courts of Constable and Marshall, and of the Admiralty, and upon particular occasions, in the other Courts *lex Mercatoria*, &c.

2. To the second, They say that the Iudges of this kingdome doe take the Oath of Iudges, which Oath is specified amongst the statutes in 18. *Edw.* 3. and is after explained by the statute of 20. *Edw.*

20. *Edw. 3.* and that they may not stay, hinder, or delay the suite of any subject, or his judgement, or execution thereupon (otherwise then according to the law and course of the Court, where they sit) under pretence of any act of state, proclamation, writ, letter, or direction under the great or privy Seale, or privie Signet, or Letter, or other Commandement from the Lord Lieutenant, Lord Deputy, Iustice, Iustices, or other chiefe Governor of this kingdome, most of which, doth appeare by their Oath expressed in the said statutes, and the said statute of 20. *Edw. 3. cap. 8.* and the statute of 28. *Edw. 3. cap. 2.* as to Barons of the Exchequer. And that as they know no punishment due to Iudges, for their deviations & transgressions, without other aggravation; So they know no punishment layd downe by any law against them for their deviations and transgressions, in hindering staying, or delaying of Iustice, contrary to their said Oath, other then what is declared in their said Oath, and the statute of 20. *Edw. 3.*

3. To the third, they say that it is part of their said Oath, as Iudges, that they shall not counsell or assent to any thing that may turne to the damage or disherison of our Sovereigne Lord the Kings most Excellent Majestie, by any manner of way

way or colour. And that they shall give no advice or counsell to any man great or small in no cases, wherein the King is a party, And they shall doe and procure the profit of the King and his Crowne, in all things where they may reasonably doe the same; And that in the explanation of their said Oathes, by the statute of 20. *Edw. 3 cap. 1.* It is declared that they shall give no counsell to great men, nor small, in case where the King is party, or which doth or may touch the King in any point. And as your Lordships have beene honorably pleased by an order of this honorable house, bearing date the first of *March Anno Dom. 1641. Annoq; Regni Caroli decimo sexto* to give way, that they should not be compelled to answer any part of those questions, which did concerne his Majesties prerogatives or were against their oathes so they humbly represent unto your Lordships, that they conceive that the answering of the particulars of this question, doth concerne both, for that the Kings privie Counsell as the question termes it, or the Councell-board, is a Court of his Majesties high prerogative, where all proceedings are before him, and his Counsell, or before his Governor (who doth immediately, to many purposes represent his Majesties person) and the
Counsell.

Counsell. And where the great affaires of state concerning his Majesties honor, government, profit, and of great persons and causes concerning the Common-wealth, which, may not conveniently be remedied by the ordinary rules of Common-law, and many other causes have beene treated, of, and managed. And as his Majesty is the fountayne of all Iustice, within his kingdomes and may grant Cognizance of pleas unto his subjects, and Corporations, and may by his Commission authorize whom he shall thinke fit, to execute many branches of his authoritie, so they humbly conceive, it doth not stand with their Oathes or duties of their places, who are but Iudges of the ordinary Courts of Iustice, before his Majesties pleasure signified in that behalfe, to search into the Commissions or instructions of the chiefe Governor and Counsell, or to give any opinion concerning the limits, jurisdiction, orders, decrees, proceedings, or members of that high Court, and that the King hath a prerogative for the hearing some of the matters in this question specified before his chiefe Governor; We beseech your Lordships to cast your eyes on the statute of 28. H. 6. cap. 2. in this kingdom, where after matters are directed to be sent to the ordinary Courts, yet the Kings prerogative is expressly saved,

saved, notwithstanding all which his gracious Majesty (for whom it is most proper) hath of late beene pleased to limit the proceedings of that Board by his instructions in print.

4. To the *fourth*, they answer as to the *Third*.

5. To the *fift* they say that generally all grants of *Monopolies*, whereby trading, manufacture, or commerce is restrayned, & the profit which should goe to many hindred & brought into a few hands, are against law, the liberty of the subject and the good of the Common-wealth, though they carrie never so faire a pretence of reforming abuses, and that the pretended transgressors against such grants are not at all punishable by any rule of law, that they know of, And yet they say, that they conceive that his Majestie, that is, the head and father of the Common-wealth may restrayne the use and importation and exportation of certaine commodities, or confine the same into a few hands for a time where there may be likelihood of his Majesties profit, (which is the profit of the Common-wealth,) and no apparent prejudice to the Common-wealth doth appeare, and that when time shall discover such prejudice, then such restraints ought to cease; So if a man by his owne invention at home, or travell, observation, or

charge abroade doth introduce a new profitable, and usefull trade or profession into the Commonwealth, in such cases his Majesty may lawfully grant & licence the only making of such commoditie or teaching or using of such trade for a certayne time, and the transgressors against such warrantable grants, may be punished by payment of damages unto the Patentee, in an ordinary course of Iustice, or otherwise, as the nature of the offence and matter doth deserve; and as the consequence and importance of the matter may be to the King, State, or Common-wealth. And they say that the matter, manner, restrictions, limitations, reservations, and other clauses containd in such grants or licences, and the Commissions or Proclamations, thereupon and undue execution thereof, and severall circumstances may make the same lawfull or unlawfull, whereof they are not able to give any certayne resolution (before some particular comes in judgement before them) neyther are they otherwise able to answer the generall in the particulars of the said question, of what, in what cases, how, where, and by whom, or which of them, wherein whosoever desireth further satisfaction he may please to have recourse unto the knowne cases of *Monopolies*, Printed authorities, and written Reports,

Reports, and unto the statute of 21. *Ia.* in *England* concerning *Monopolies*, and the severall exceptions and limitations therein.

6. To the *sixt*, they say they can no other wise answer then they have already in their answer to the third question, for the reasons therein set forth.

7. To the *seventh*, they say, that a Proclamation or act of State cannot alter the common-law, and yet Proclamations are acts of his Majesties prerogative, and are, and alwayes have beene of great use, and that the contemners of such of them as are not against the law, are and by the constant practise of the *Star-chamber* in *England* have beene punished, according the nature of the contempt, and course of the said Court, and although acts of State, are not of force to bind the goods, possessions, or inheritance of the subject, yet they have beene of great use for the settling of the estates of very many subjects in this kingdome, as may appear in the *Report* of the case of *Irish gavelkind* in Print. And further to that question they cannot answer for the reasons in their answer unto the third question set forth.

8. To the *eight*, they say, that they know no ordinary rule of law, by which the subjects of this

kingdome are made subject to Marshall-law in time of peace, and that they find the use thereof in time of peace, in *England*, complayned off, in the petition of right, exhibited to his Majestie in the third yeare of his raigne, And that they conceive the granting of authority and Commission for execution thereof, is derived out of his Majesties Regall and prerogative power, for suppressing of suddaine and great insolencies and insurrections, among armies, or multitudes of armed men lawfully or unlawfully convented together, (the right use wherof in all times hath beene found most necessary in this kingdome) And further to that question they cannot answer, for that as they conceive, it doth concerne his Majesties Regall power, and that the answering of the other part of the question doth properly belong to another profession, whereof they have no Cognizance.

9. ⁴ To the *ninth* they say, that as the taking of any Oath before any but such Iudges or persons as have power to give or demaund an Oath, for decision of controversies, is by most Divines in most cases counted to be a rash Oath, and so an offence against God, within the third Commandement, so the prescribing and demaunding of a set Oath by any that cannot derive power so to doe from the
Crowne,

Crowne (where the fountaine of Iustice under God doth reside) is an offence against the law of the Land , and as for voluntary and extrajudiciall Oathes , although freely taken before arbitrators or others, they say (as this kingdome is composed in many particulars, as the nature & consequence of the cause, or the quality of the person who taketh , or before whom the same is taken, may concerne the Common-wealth, or the members thereof) such taking of such Oathes or proceeding or grounding on such Oath in deciding of controversies , according to the severall circumstances, that may occurre therein, or the prejudice, it may introduce to the Common-wealth, may be punishable by the Common-law , or (if it grow unto an height or generall inconvenience to the common-wealth or members thereof) in the *Castle-chamber* ; For though such an Oath be voluntary , yet in most cases , it is received by him, that doth intend to ground his Iudgment thereon , and after the Oath is taken, the arbitrator, or he that intends to yeeld faith to the party , that tooke the Oath, doth examine him upon one or more questions, upon the said Oath, unto the answer whercof, hee doth give faith and assent, trusting on the said Oath. And whereas Oathes by Gods institution

were

were chiefly allowed to bee taken before lawfull Magistrates, for ending of controversies, yet common experience doth teach in this kingdome, that oftentimes orders and acts grounded on such voluntary Oathes, beget strife, and suits; and commonly such orders when they come to bee measured by rules of law, or equitie in the Kings Courts become voyde, after much expence of time, and charge that we say nothing of that, that thereby many causes proper to the Kings Courts are drawn *ad aliud examen*, and thereby the Kings justice and Courts often defrauded and declined.

10. To the *tenth*, they say, that they are not Judges of rules of policie, but of law, and that they know no certayne rule of law, concerning reducement of fines. The same being matters of his Majesties own meere Grace, after a man is censured for any offence: And that they know no law, that none shall be admitted to reducement of his fines or other penalties in the Courts in the question specified, untill he confesse the fact for which he was censured. But forasmuch as the admittance to a reducement after conviction, for an offence, is matter of Grace and not Iustice; It hath beene the constant course of these Courts both here and in *England*, for clearing of his Majesties justice

stice (where the partie will not goe about to cleere himselfe, by reversall of the censure or decree) not to admit him to that grace , untill he hath confessed the iustnesse , of the sentence pronounced by the Court against him. And that the rather for that commonly the ability and disabilitie of the partie doth not appeare in judgement before them but the nature and circumstances of the offence , according to which, they give sentence against him or them , *in terrorem* after which , when the partie shall make the weaknesse of his estate appeare, or that the Court is otherwise ascerteyned , that they doe of course proportion the censure, or penaltie, having regard to his estate.

11. To the *eleventh* , they say , That neither the Iudges of the Kings Bench (as they informe us , that are of that Court) or Iustices of Gaole delivery , or of any other Court, doe or can by any law they know , deny the copies of Indictments , of Felony, or Treason , to the partie only accused as by the said question is demanded.

12. To the *twelfth* , they say, that where lands are holden of the King by the Knights service , *in Capite* , the tenant by the strict course of Law ought in person to doe his homage to the King , and untill he hath done his homage , the ancient course

courſe of the Exchequer hath beene & yet is, to iſſue proceſſe of *distringas* out of the ſecond remembrance Office, to diſtrayne the tenants *ad faciendum homagium* or *pro homagio ſuo reſpectuando*, upon which proceſſe, the Shiriffes returneth iſſues. And if the Tenant doe not therupon appeare and compound with the King, to give a fine for reſpite of homage, then the iſſues are forfeited to the King for his contempt, but if he appeare, then the Court of Exchequer doth agree with him to reſpite his homage for a ſmall fine, wherein they regulate themſelves, under the rate expreſſed and ſet downe in *England* by vertue of a privie Seale in the 15. yeare of *Queene Elizabeth*, whereby the rates are particularly ſet downe, according to the yearly value of the Lands, which rates are confirmed by act of Parliament in 1. *Jacob. Regis cap. 26.* in *England*, before which time there was not any ſuch certayntie, but the ſame reſted in the diſcretion of the Court by the rule of Common-law, and ſo it doth at this day in *Ireland*, howbeit we conceive that the Court of Exchequer here doe well to regulate their diſcretions by thoſe rates in *England*, and rather to be under then to exceede the ſame, which the Barons there doe, as they doe informe us, that are Iudges of the other Courts.

13. To the 13. they say, that they know no rule of Law or statute, by which it should be censureable, in the subjects of this kingdome to repayre into *England*, to appeale unto his Majesty for redresse of injuries, or for other their lawfull occasions, unles they be prohibited by his Majesties writ, or proclamation or, other his Command. But they find that by the statute of 5. *Rich. 2.* the passage of the subject out of the Realme, is prohibited without speciall licence, excepting Noblemen, & others in the said statute specially excepted, & some inference to that purpose may be made upon the statute of 25. *Hen 6 cap. 2.* in this kingdome.

14. To the 14. they say, that some Deanries & dignities, not Deanes or dignitaries (as the question propounds it) are properly, & *de mero jure* donative by the King, some Elective, & some Collative, according to the first foundation & usuage of such Churches, & they humbly desire that they may not be required to give any further answer to this question; for that it may concerne many mens estates which may come judcially in question before them

15. To the 15. they say, that they conceive that where priviledges are claymed by any body politicke, or other, the Kings Counsell may exhibite a *quo-warranto* to cause the parties clayming such

priviledges, to shew by what warrant they clayme the same, & that the Court cannot hinder the issuing of processe at the instance of the Kings Atturney, or hinder the Kings Atturney to exhibite such informations. But when the case shall upon the proceedings be brought to judgment, then & not before the Court is to take notice and give judgment, upon the merite & circūstances of the cause, as upon due consideration shalbe conceived to be according to law, in which case the Iudges or the Kings Atturney (as they conceive) ought not to be punished by any ordinary rule of law or statute that they know. But for the particular case of *Quo-warranto* for that it hath beene a great question in this present Parliament, & so concernes the highest Court of justice in this kingdome, & also concernes two other of his Majesties Courts of justice, & therein his Majesties prerogative in those Courts, they say that they cannot safely deliver any opinion therein, before it comes judicially before them, and that they heare it argued and debated by learned Counsell on both sides.

16. To the *sixteenth* they say, that although the Iurors be sole Iudges of the matter of fact, yet the Iudges of the Court are Iudges of the validitie of the evidence, and of the matters of law arising out
of

of the same, wherein the Iury ought to be guided by them. And if the Iury in any criminall cause betweene the King and party, give their verdict contrary to cleere and apparent evidence delivered in Court, they have beene constantly, and still ought to be censured in the *Star-chamber* in *England*, and *Castle-chamber* here, for this misdemeanor in perverting the right course of justice, in such fines and other punishment as the merites & circumstances of the cause doth deserve, according to the course of the said Courts, for that their consciences ought to be directed by the evidence, and not to bee misguided by their wills or affections. And if the Iury know any matter of fact, which may eyther better or blemish their evidence, they may take advantage thereof, but they ought to discover the same to the Iudges. And they say that this proceeding in the Court of *Castle-chamber* is out of the same grounds, that writs of attainr are against a Iury that gives a false verdict, in a Court of Record at the Common-law betwixt partie and partie, which false verdict being found by a Iury of twenty foure, notwithstanding that the first Iurie were Iudges of the fact, yet that infamous judgement was pronounced against the first Iury, which is next or rather worse then judgment to death, and

did lay a perpetuall brand of perjury upon them, for which reason it was anciently called the *villanous judgement*, and they say that the law to direct the punishment for such offences is the course of the said Court, which is a law as to that purpose, & the statute of 3. *Henr. 7. cap. 1.* and other statutes in force in this kingdome.

17. To the *seventeenth*, they say, they can answer no otherwise, then they have in their answer to the next precedent question.

18. To the *eighteenth*, they say, that in a Legall construction the statute of *Magna Charta* in which the words *Salvo contenemento* are mentioned is only to be understood of amerciaments & not of fines, yet where great fines are imposed *in terrorem* upon the reducement of them regard is to be had to the abilitie of the persons.

19. To the *nineteenth*, they say, that if one doth steale a sheepe or commit any other felony, and after flyeth the course of justice, or lyeth in woods, or mountaynes upon his keeping, yet doth he not thereby become a Traytor, neyther doth a Proclamation make him so, the chiefe use whereof in such a Case is, to invite the partie so standing out to submit himselfe to justice, or to forewarne others of the danger they may runne into by keeping him
company,

company, or giving him mayntenance, and reliefe whereby he may the rather submit to Iustice.

20. To the *twentieth*, they say, that the testimony of Rebels, or Traytors under protection of Theeves, or other infamous persons is not to be used or pressed as convincing evidence upon the tryall of any man for his life, and so is his Majesties printed instructions, as to persons condemned, or under protectiō, yet the testimony of such persons not condemned & being fortified with other concurring prooffe, or apparant circumstances may be pressed upon any tryall, and for discovering of their fellowes, abetors, or relievers as the circumstances may offer themselves in their examinations, especially if before they confesse themselves guiltie of the offence in imitation of the approver at the Common-law, whereof no certaine rule may be given. And it neede not be made a question here, whether the Iurors or Iudges ought to be Iudges of the matter of fact, it being positively layd downe in the sixteenth question that they are. And though their false verdict doth convince, or not convince the prisoner, yet they may be questioned, and punished for a false verdict, as in their answer to the sixteenth is already declared.

21. To the *twentie one*, they say, that that question is now judicially depending, and hath beene already solemnely argued in his Majesties Court of *VVarde*s, in which Court their assistance for declaration of the law therein is already required. And therefore they humbly desire they may not be compelled to give any opinion touching that point untill it be resolved there.

22. To the *twentie two*, they say, that they doe conceive, that there is no matter of Law contained in the said question, yet for the further satisfaction of your Lordships, they say that upon view of an Act of state, bearing Date at his Majesties Castle of *Dublin* the *twenty fourth* of *December* 1636. grounded upon his Majesties Letters of the *fift* of *Iuly* then last past, it appeared unto them that foure shillings in the pound, as of his Majesties free gift and reward, out of the first payment of the increase of rent reserved to his Majestie, was allowed to the Iudges that were Commissioners and attended that service. And we humbly conceive that the receiving of that foure shillings in the pound, of his Majesties bountie, stands well with the integrity of a Iudge, and those Iudges did informe them that they did not avoyde any Letters-Patents upon the Commission of Defective Titles

Titles but received such to compound as submitted for the strengthening of their defective Patents and Titles, and such as would stand upon the validity of their grants were left to the tryall at law. And that the Compositions made after the said grants of the foure shillings in the pound were made according to rules and rates agreed upon by all the Commissioners before his Majesties said Letters or the said Act of State, and not otherwise.

George Shurley. Edw. Bolton. Sa. Mayars.

Hu. Cressy. James Barry. Jam. Donellan

William Hilton.

Copia vera.

Extract per Phil. Percivall.





M^r D A R C I E S

R E P L Y T O T H E

A N S W E R O F T H E

I V D G E S.

MY LORDS,

His Majesties most humble and faithfull subjects, the Knights, Citizens, and Burgesles in Parliament assembled representing the whole Commons of this Realme calling to mind the late invasion made upon the Lawes and just rights, have heretofore presented unto the Lords House certaine questions of great weight and moment, to the end their Lordships might thereunto require the answer of the Iudges in writing, which being long sithence accordingly commaunded by their Lordships, the Iudges have of late delivered

red in, a writing to the Lords House by them stiled, *an Answer unto the said Questions*, which being sent to the Commons house to be taken into consideration, and the same & all the partes thereof being weighed in the ballance of the grave judgement, and knowledge of the said house of Commons, the said answer was upon question voted to be (*minus pondus habens*) and not to merit the name of an answer.

This my Lords being the occasion of this conference, the house of Commons appointed me, a feeble Organ, to utter part of their sense of the style and manner of this writing, and to declare part of those reasons which satisfied their judgments; that, the said writing was short and insufficient (*o utinam*) that were all.

My Lords, the Iudges had divers Moneths time to answer plaine questions (plaine, I speake of those who would be plaine) the house of Commons a few dayes onely to consider of that intricate writing. My powers are weake, and the infirmities of my body are visible, both in part occasioned by an high hand, I should therefore faint under the weight of this burden; but that the taske is not great, I doe represent to your Lordships by way of rehearseall onely some partes of those reasons

and authorities which were gathered and ripened to my hands by the house of Commons.

My Lords in matters of importance the course hath bene ancient and not yet deserted, to begin with *Prologues* or *Exordiums*, the worke is not mine I will onely (*In nomine sanctissime Trinitatis*) make my entrance upon the matter of this Conference which is a generall concernment; a great concernment of the whole kingdome: And to that purpose I will declare the causes and reasons which moved or rather inforced the house of Commons, for to digest and propound the said *Questions*, and to make it appeare that none of them is (*Idea Platonica*) none of them circumventing, and all depending now or of late.

Preamble
to the
questi-
ons.

To mantayne the preamble to *Questions* (*viz.*) That this Nation ought to bee governed by the Common-lawes of *England*, that the great Charter and many other beneficiall statutes of *England* are hereof force, by reasoning or argumentation, were to alter a foundation layd 460. yeares past, and to shake a stately building thereon erected by the providence and industrie of all the ensuing times and ages: This is so unanswerable a truth and a principle so cleere, that it proveth all, it needeth not to be proved or reasoned.

Reasons

Reasons why the *Questions* were propounded.

The reason for the *first* was, the late introduction of an arbitrary government in many cases by some Ministers of estate contrary to the lawes and statutes afore said, a government contrary to the just freedome & property of his Majesties people, in their lives, estates and liberties, whereas the subjects governed by the lawes of *England* are and ought to be free subjects, the late disuse therefore of those lawes in execution, and the measure of justice being squared by the *Lesbian line* of uncertainty, as contrary to the lawes afore said, as any (*oppositum is in objecto*) produced the *first question*, and I hope not improperly.

The reason for the second in part ariseth out of the Oath of a Iudge 18. *Edw.* 3. to be found among the Printed statutes *Polton fol. 144.* and out of the statutes of 20. *Edw.* 3. cap. 1. 2. & 3. *Polton fol. 145.* This Oath is comprehensive and extends to the Iudges, the Barons of the Exchequer, and Iustices of Gaole-delivery, and their associats.

This great and sacred Oath contaynes severall branches. First, well & lawfully to serve the King & his people in the Office of a Iustice. Secondly, not to Counsell or consent unto any thing tending to the Kings damage or disinherison. Thirdly, to

warne the King of his damage when hee knowes it, Fourthly, to doe equall Iustice to rich and poore, &c. without respect of persons. Fifthly, to receive no reward. Sixtly, to take no Fee of any other then the King. Seventhly, to commit such as breake the peace in the face of Iustice. Eightly, not to mantayne any suite. Ninthly, not to deny Iustice notwithstanding the Kings Letters or Commandements, and in that Case to certifie the King of the truth. Tenthly, by reasonable wages to procure the profits of the Crowne. Eleventhly, if he be found in default, in any the matters aforesaid, to bee in the Kings mercie, body, Lands, and goods.

The second reason principally moveth from the following particulars; In the Kings Bench the Major-part of the Iudges denyed his Majesties writ of prohibition to the late Court called the high Commission, in a cause meerely temporall. The foure Courts of Iustice durst not proceede in any cause depending before the chiefe Governor, or at the Counsell-board upon paper petitions, or rather voyde petitions, these paper-petitions being the oblique lines aforesaid, grave Iudges of the law were commonly assistants, and more commonly referrees in the proceedings up-
on

on these paper-petitions, in what causes? in all causes proper for the Cognizance of the Common-law, and determinable by writs of right, and petitions of right, and so to the most inferior action, the like of the Courts of equitie, whether this be lawfully to serve the King and his people, or whether the King, was at losse by the non-prosecuting of the causes aforesaid in their proper orbes, by originall writs, which might afford the King a lawfull revenue, and likewise by the losse of fines, and amerciaments, naturall to actions at the Common-law, or whether the losse aforesaid was made knowne to his Majestie, or who consented to the Kings damage therein, or whether this be a denial of justice? to deferre it upon paper Orders or Commaunds, be conformable to that Oath, I will pretermitt; yet your Lordships may even in this mist discern a cleere ground for the second question.

The motive which in part stirred the third, and fourth questions, was the infinity of Civill causes, of all natures without exception of persons, without limitation of time proceeded in, ordered, decreed, and determined upon paper-petitions at Counsell-board, & by the chiefe Governor alone; The Commons of this kingdome observing the
3. & 4. q³
3. & 4.
ratio.
Judges

Judges of the law who were Counsellors of estate, to have agreed and signed unto such Orders, the Judges of the foure Courts, and Iustices of Assize in all the partes of the kingdome to bee referrees upon such proceedings, wherby these new devises, were become so notorious, that as all men heavily groaned under them, so no man could bee ignorant of them.

s. 6. 7. q.
s. 6. 7. rat.

By the colour of Proclamations more & more frequent, and of the Orders, and Acts of state at Counsell-board, which were in a manner infinite, and other proceedings mentioned in these questions, these effects were produced; First imprisonment, close imprisonment, of such numbers, that a great defeate iu a battle could hardly fill more gaoles and prisons, then by these meanes were surcharged in *Ireland*, Secondly by seizures made by crewes of Catchpoles and Caterpillers, his Majesties Leige people lost their goods, as if lost in a battaile, nay worse without hope of ransome; Thirdly possessions were altered, and that so often, and so many, that more possessions were lost by these courses in a few yeares, then in all the Courts of Iustice in *Ireland* in an age or two; The fourth effect was this, after liberty was taken away, propertie altered, and possession lost, by the wayes
aforesaid,

aforesaid, that was not sufficient, the subject must be pillored, papered, stigmatized, and the image of God so defaced with indignities, that his life became a continuing death the worse of punishments, in these seates were advising, and concurring some grave and learned Judges of the Land, who were Counsellors of estate, as by their signatures may appeare.

The house of Commons finding as yet no warrant of president, nor countenance of example in the law of *England*, to beare up the courses afore said, have drawne the said *Questions* from the effects afore said.

My Lords, the liberty, estate in lands or goods, ^{s. q. s. rat.} the person of the subject; nay his honor and spirit being invaded, altered, and debased in manner afore said, there remayned yet one thing, his Life: See how this is brought into play, nothing must escape, were not the Gates of *Iarnus* shut up, was not the Kings peace universall in his three kingdoms, when a Peere of this Realme, a Counsellor of the Kings, a great Officer of state was sentenced to be shot to death in a Court Marshall, what the cause was, what defence was permitted, what time given, and what losse sustayned? I submit to your Lordships, as therein most neerely concer-

concerned, were not others actually executed by Marshall law, at such time as the Kings Iustice in his Courts of law, was not to be avoyded by any person whatsoever. This was in part the ground of the eight question.

9. q. p. rat.

This question is plaine, a late introduced practise here, contrary to former use, and no appearing president to warrant such prosecution for a voluntary Oath, and the great benefit, and quiet accrewed to his Majesties people by arbitermets conceived by consent of parties, hath in part occasioned this question.

10. quest.

10. ratio.

Heretofore this Confession was not required, for the Iustnesse of the Iudgements was then able enough to beare them up, and if the judgement in some Case had beene otherwise, what force can the confession of a delinquent add to a Iudiciall act, this is part of the reason for this question.

11. quest.

11. ratio.

A complaint exhibited in the house of Commons touching the denyall of the Copy of a Record, which the complaynant undertooke to Iustifie, in part raised this question.

12. q.

12. rat.

In *King James* his time, by an order conceived in the Court of Exchequer upon great debate, and warranted by ancient presidents the respite of homage was reduced to a certaintie, viz. two shillings

lings sixe pence sterling. For a Mannor yearly, and
 so for Townes, and other portions of Land, this
 course was alwayes held untill now of late the
 respite is arbitrarily rayfed as appears by the se-
 cond remembrances certificate, viz. I finde that
 anciently before the beginning of *King James* his
 raigne, every Mannor payed three shillings foure
 pence *Irish per annum*, & every Towne-land, twen-
 tie pence *Irish per annum*, as a fine for respite of ho-
 mage, but cannot finde any order or warrant for it,
 untill the fifth yeare of the said Kings raigne, and
 there, in *Easter Terme* 1607. I finde an order en-
 tred directing what homage every man should pay
 a Copy whereof you have already from mee, the
 preamble of which orders sheweth that, that mat-
 ter had beene long depending in the Court unde-
 cided, which induceth me, to beleieve that there
 was no former president or order in it. About
 three yeares after, the freeholders of the Countie
 of *Antrim* as it should seeme, finding this rate to
 be too heavy for them, they petitioned to the Lord
Chichester then Lord Deputy for reliefe therein, &
 I finde his Lordships opinion to the Court thus
 Recorded.

The se-
 cond re-
 mem-
 brances
 certifi-
 cate.
 1. Junii,
 1641.

I know much of the petitioners Lands is waste,
 and no part of it improved by any manner of hus-
 bandrie,

bandrie, other then in grazing of Cattle, and in sowing of little Oates. And the proprietors of the Land, to be for the most part very poore, and needie, and the two Children of *Neale mac Hugh* to be yet under age; Wherefore I thinke it fit that the Court of Exchequer should consider thereof, and rate the respite of homage accordingly for a time, untill the Countie be better inhabited, and these men made to understand that it is not an imposition, but a lawfull duty and payment due to his Majestie. This is my advise and opinion for the present, xxx. die April. 1610.

Arthur Chichester.

Vpon this the said Freeholders were admitted to pay but foure pence *Irish* every Trough of Land, it consisting of fixteene Towne-lands, and according to this rate they still payed untill the yeare 1630. and then the Court taking notice of the unequalitie of it, made this order, 5. Febr. 1630.

After this I finde that all his Majesties Tenants did conforme themselves to the said order of 1607. untill *Easter Terme* 1637. in which Terme this ensuing order was made which is the last that I can finde Recorded in my Office.

Henry V Warren.

I finde

I finde by the payments made in the late *Queen Elizabeths* time that the rates of homage payed was according to the said order of 1607.

Henr. V Warren.

Divers were actually imprisoned and long kept in close restraint, for none other cause then in dutifull manner & be seeming termes to have made knowne their particular complaints to his sacred Majesty imprisonment of this kind was frequent, therefore it is not improper to demand by what law it was done. 13. quest.
13. ratio.

Many have lost great estates and possessions by Orders of the Counsel-board, although the Deanes elected, or actuall Deanes confirmed their estates, if no donation from the Crown were found upon Record to the confirming Deane, and this after that by verdict at the Common-law the Deanrie was found to be Elective, this *Question* therefore is not improper. 14. quest.
14. ratio.

After such time as this Parliament was agreed upon at Counsell-board to bee summoned; some persons having prepared bloudy and destroying Bills to be past as lawes, and intending to defeate by act of Parliament very many of his Majesties faithfull subjects of this kingdome of their estates 15. q.
15. rat.

and liberties, and having obtayned some undue elections by threates or intreaties, & mistrusting that all should run cleere before them, have caused twenty foure Corporations to bee seized, upon the returne of the first summons in severall *Quo-warrantoes* procured by *Sir Richard Osbalston* late Attorney generall to shew cause why they sent Burgesse to the Parliament, the said Corporations having formerly sent Burgesse to the Parliament, even to the last Parliament, by meanes whereof the said Corporations sent no Burgesse in the beginning of this Parliament, from this act being done in a legall Court against the high Court of Parliament sprung this question, which *My Lords* is of consequence, if Parliaments be so as without question they are.

16. quest.

16. ratio.

17. quest.

17. ratio.

18. q.

18. rat.

The faith which the Common-law giveth to verdicts, the Iurors being Iudges of the fact, the late usage of that great Court growing to the punishment of Iurors, and others in greater numbers by heavier fines, and more shamefull punishments without respect to estate, age, sex or qualitic then was or can be observed in all precedent times, and the just sense thereof, moved the house of Commons to propound these questions.

19. quest.

19. rat.

My Lords, a poore fellow stole or was accused to have

have stolne a Sheepe, feare, or guilt, or both brought him to the mountaynes, another relieved him, the reliever was executed as a Traytor, and after the principall submits to tryall and judgment, and was acquitted, this example *My Lords* I hope may warrant the question.

The testimony of such infamous persons, have brought men of qualitie to their tryall, for their lives and being acquitted the Iurors being of very good ranke, were heavily censured in the *Castle-chamber*, aswell by fines surmounting their abilities, as by most reprochfull punishments, upon these acts, the question is grounded.

There being no warrant in the Printed law, or otherwise for ought yet appearing for to make this a *Tenure in Capite*, the constant course of the Court of *wards* taking it to be no *Tenure in capite*, since the erection of that Court untill *Trinitie terme* 1639. it was then and not before certified a *tenure in capite* by the then Attorney of that Court, who said that the Iudges concurred with him in that opinion, by which meanes Counsell did not then argue, and the next terme after were denied to be heard, *ne aliquid contra responsum prudentum* this being done in the Court of *wards*, the question did spring from thence.

The

The two and twentieth question was not yet agitated in the house of Commons nor brought thither, therefore *My Lords* that may be deferred to a further conference; By this which I have opened being the smaller part of those weighty reasons delivered unto mee by the house of Commons, yet the best I can for the present remember, I hope your *Lordships* are satisfied that those questions were not intrapping, fayned, or circumventing, or phantazies, as formerly I touched.

In the next place I will labour to give your *Lordships* a more cleere satisfaction, that those questions grounded upon sufficient and apparant reasons, and causes doe deserve cleare and satisfactorie answers, and to remove all doubts, The questions I will no more call *Questions*, I will humbly style them *Causes of weight and Consequence*, wherein the *Lords and Commons* of this Realme on the behalfe of themselves and their posteritie in after times, are *Plaintifes*, and only *delinquents* of an high nature are *defendants*, in this high Court of Parliament. It is not unworthy your *Lordships* consideration; to whom the questions were put, I answer unto the *Judges* of the Land, who are, and sure I am ought to be first *etate graves*, secondly, *erudi-*

tione

tionem præstantes, thirdly, usu rerum prudentes, fourthly, publica auctoritate constituti.

The persons unto whom being thus qualified, the place where, is most considerable, it is the high Court of Parliament, the Iudges are called thither (*Circa ardua & urgentia negotia regni*) of the whole kingdome what to doe (*Quod personaliter inter sint, cum Rege ac cum cæteris de consilio suo super dictis negotijs tractaturi consiliumq; impensuri.*) Therefore they are not called thither to bee ciphers in augurisme, or tell clockes, no, those great causes are mentioned in their writ, and upon that great Oath, they are to give faithfull counsell and make direct answers to your Lordships in all things wherein (*ardua & urgentia regni*) are concerned, and whether? that concernment doe comprehend the matters aforesaid. I doe humbly offer to your Lordships great consideration most of the matters included in those questions are solemnely voted in both houses as grievances, as may appeare by the petition of Remonstrance, the Iudges could not be ignorant of this, and do take notice of the same in their preamble.

My Lords, In the third place no man is more unwilling to discover the nakednesse of my Fathers, if any be, then I am, yet the question being
not

Lord
Chancel.
Egerton
de post-
nat. fol.
17.

not whether the Arke should be rescued from the *Philistines*, but whether it should be preserved against the negligence of some *Ophni* and *Phines* in their hands that have the custodie of it, Therefore I must obey, and as I am Commanded I will offer unto your Lordships, how the preamble and answers of the Iudges might bee sufficient, and wherein they are both defective and dangerous.

The Iudges in the first reason of their preamble, insist much upon the want of president in this kinde, onely one president in the raigne of King *Richard* the *seconds* time, which they pray may not be drawne into example.

ratio.

My Lords, This reason requires a more cleere explanation which wee hope shall be demaunded in due time. It urgeth us to this just protestation, that before the best flower in his Majesties Royall garland should wither, wee shall be ready to water the same with showers of our blood, even to the last drop in his Majesties service, and with our lives and substance will mantayne the just prerogative of our gracious Lord King *Charles* and his posteritie, whom wee pray God to flourish on earth over us and ours, untill all flesh bee convoked before the last great Tribunall; Yet *My Lords* that

that president might be spared by the Iudges, of this no more for the present, I will not exasperate, had they pleased, more naturall presidents might be stood upon, and easily found, and even in that ill remembred president; if the Iudges in *Richard* the *seconds* time had made direct and lawfull answers, they had escaped punishment and prevented many inconveniences which ensued.

My Lords, if presidents be necessarie, of many I will enumerate a few, *Deutronomy* cap. 17. *vers.* 8. *Si difficile & ambiguum, &c.* Almightye God directs us the way to truth, *Deutronom.* cap. 32. *vers.* 7. *Interroga patrem tuum, &c.* The Romanes sent to Greece for a declaration of their lawes, in causes like to happen, *Tit. Li. v. decad. 3. fol. 45. g.* *Lancelotus de Ecclesiasticis Constitutionibus tit. 3. Canonum alij sunt decreta Conciliorum, alij statuti, alij dicta sanctorum, Rottoman. de Jure Civili tit. 4. Prætorum dicta & responsa prudentium*, which cannot bee without questions, venerable *Bede lib. 1. cap. 27. S. Augustine* demaunded generall questions; *M. Sleiden super Eadmerum, fol. 171.* *VVilliam* the Conqueror did call to the Iudges, to declare and compile *Edgars* lawes, and *S. Edwards* lawes, which were buried, and forgotten, by the interruption of the *Danish* governement.

Poltons
stat. fol.
2.

Archi.
Turris
Lond.

In the time of King Henr. 3. certaine knights of Ireland, desired resolutions in England concerning Coparcenerie and received resolutions according to the lawes of England, and this in Parliament, as appears in the statute called *statut. de Hiber.* 14. Henr. 3. in the printed Booke.

Ordinationes factæ de statut' terr' Hiberniæ at large in the Roll of 7. Edw. 2. *parte prima, membr. 3. & 18. Rot' Claus. anno 2. Edw. 3. membr. 17. Rex concedit quod ad primum Parliamentum omnes Hiberni qui voluerint legibus utantur Angliæ sine Cartis inde fierendis. Rot. Claus. anno 5. Edw. 3. parte prima membr. 25.* The same law in Case of wardships.

Ordinationes pro Regimine Hiberniæ 5. Edw. 3. *Par' membr. 25. & 35. Edw. 3. parte prima, membr. 9.* which *Consilium* ought to bee understood of the Parliament as hereafter I will declare.

Ordinatio facta de ministris Regis in Hibernia Claus. 18. Edw. 3. parte secunda membr. 9. & 17. & ann. 20. Edw. 3. parte prima in dorso, & anno 25. Edward. 3. membr. 30.

+ My Lords, I have not yet learned how *Sillogismes* can be made, or answers *Cathegoricall*, without propositions. I am as ignorant after what manner Ordinances or reformation could bee made without questions or propositions.

It may be objected that the word *Quere* or *Question* is new, that word was nothing strange in *Edward* the thirds time, *Rot. Parliament*, 21. *Edw.* 3. num. 41.

The Commons in Parliament prayed that it may be inquired how, it comes to passe that the King hath no benefit of his land of *Ireland*, considering hee had more there then any of his ancestors, may it not be as lawfull to inquire in this Parliament, wherefore the King is in debt, and yet his people here gave him more supplies then to any of his ancestors, or wherefore his lawes are not observed, I find no difference.

Cambd.
Anals
Hibern.

In the printed yeare Booke 2. *Rich.* 3. fol. 9. the King propounded severall questions to the Iudges in the *Star-chamber* in Cases not then depending.

Their second reason, is fully answered to the first, and for more cleare satisfaction, the words of the writ, which bring them hither, are *viz.* to give Counsell *circa ardua & urgentia negotia regni*, the matters now in agitation are *maxime ardua, maxime urgentia*.

The yeare bookes of law doe prove *Provisiones & Ordinationes*, and no cause is said to bee depending f. *N.B.* 32. d. 39. *Edw.* 3. 7. b. *Thorp.* The

Lords being assembled can make Ordinances as strong as a statute, by the opinion of that Iudge such Ordinances cannot be avoyded, but in Parliament, an act or statute may bee avoyded or repealed in *Parliament*.

3. ratio.

Where they say that the *Questions* though in number but *twenty two*, yet they include *fifty two* questions, that all the affaires of Church & Common-wealth may bee included in the resolution thereof, and that they will not bee concluded by their answers to the same.

My Lords, the house of Commons made the questions so many as they are for the more cleare explanation of their candid intentions, and not for difficultie, whereas they might reduce them to fewer, but to the end the answers might be the more punctuall, and satisfactorie unto positive points, and knowne law, and the custody of the law, the great treasure of the Land, being committed by his Sacred Majesty to their trust, to the end they should declare how? and after what manner, they issued and dispensed that treasure, and discharged that great trust? and not to bee bound by their resolutions in Parliament; For Iudges are and ought to bee bound by resolutions in Parliament, and not Parliaments by them.

To

To their fourth reason, what succeeding ages ^{4. ratio;} will doe, we do well hope, they will not do amisse, that no occasion shall bee administred hereafter which may inforce the house of Commons to propound the like questions.

That by reason the Kings prerogative and the ^{5. ratio;} concernement of his other interests they cannot answer without his Majesties especiall direction, considering the duties of their places and their Oathes.

My Lords, It is manifest that by their Oathes they are bound to interprete the lawes truely betweene the King and his people, and betweene partie and partie, and if in any Case granted, it cannot be denyed when the Common-wealth desires a Declaration of the law in certaine points, wherein they conceive their just liberties to have beene invaded, least under colour of prerogative which the Parliament holds to be sacred, some ministers may presume (as of late they have endeavored) to destroy the peoples just liberties.

In the ordinarie Courts of Justice, the Judges upon Oath are bound to afford the subject Justice against the King, and all others, and are appointed by his Majesty for that purpose, all writs are in his Majesties name in the Kings bench, the pleas
are

are styled *Coram Rege*, Letters-patents and writs originall are *Testeme ipso*, the King is therefore present in Parliament, being the highest tribunall, where in truely he sits in the exaltation of Royaltie and greatnesse. Therefore the Commands of all his ordinary Courts are the commands of the King, much more Commands in Parliament, where his presence is more apparant and essentiall then in all other Courts of this kingdome.

It appeares copiously by the great Charter, and by constant practise of all Parliaments since that time, that all Courts and Iudges were regulated by Parliaments, as for the Kings prerogative, or revenue, the Iudges cannot bee ignorant, but the Parliament is and ever hath beene the best mantayner of his just prerogatives, the best overseer of his revenue, which if it fall short, they onely are able and willing to supply.

6. ratio.

It is true, that the abuses of former times might be reformed for the future by Bills to bee past as statutes Yet that is away about, and we may not loose the possession of our lawes, and just liberties nor by new statutes admitt impunitie, or give countenance to past offences, statutes of this kind sufficient were already enacted and passed in former ages.

The

The declaration of a knowne law, and the manifestation of wholesome statutes already established well may helpe the Commonwealth, for the present, but cannot in any probabilitie fall out hereafter to be prejudiciall to the state or Commonwealth, and there is no president or example of any such prejudice. 7. ratio?

It is confessed that most of the matters contained in the Questions are already voted for grievances in both houses, and that very justly, but how the law is therein, remaynes yet to be declared, as to this present Parliament, which I hope in due time shall bee declared, according to law and justice, as in many Parliaments before the same or the like hath beene often done. 8. ratio?

Where they doe againe insist upon the want of president, and withall that in the preamble to the Questions, the protestation cleares the law. 9. ratio?

This word *President* strikes close unto us, I have answered it before by presidents, yet some more presidents I will offer as often as they speake the word president 7. 8. *Elizabeth Dy. fol. 241. b. placit.* 49. The Kings Atturney demanded the opinion of the Iudges, 9. *Elizab. Dy. 261. placit. 28, Casus Hiber.* where the Iudges of England signed their opinions to questions propounded by the Iudges of

of Ireland, 11. *Eliz. Dy. fol. 282. b, plac. 26. Casus Hiber.* 19. & 20. *Elizab. Dy. 360.* The Case of arraignment of a Peere, the like 13. *Caroli* by all the Iudges of England; the Earle of Ormonds Case, and yet in none of these Cases the matter was depending before them.

Notwithstanding the protestation may cleare the law, yet in all precedent ages, lawes cleare in themselves, for their greater honor and countenance, they have beene declared and enacted in Parliament.

The Law declared by *Magna Charta* was cleare before, yet it was enacted 9. *Henr. 3.* and in thirty Parliaments since *Cooke 8. 19. b. Primes Case* the statute of *prærog. Regis.* And the statute of 25. *Edw. 3.* of treasons, is declarative and so are many other statutes. *Adam* ate the forbidden fruite, *Cain* killed his brother, God demaunded whether this was done; yet he could not be ignorant of the fact. The first article in the *Civill* and *Canon law Courts*, is, whether there is such a law all this is done for illustrations sake.

My Lords, The ground of the *Questions*, and the preamble to the writing styled an *Answer*, kept me so long, that I feare much to have trespassed upon your patience; and yet the importance of the cause

Genes. c.
3. vers. 7.
& c. 4.
vers. 8.

cause urgeth me to importune your Lordships favour a little further.

This *Question* is short and yet comprehensive, that we are a free people, is confessed to my hands, to that part of the answer I doe not except, the second part of the *Question* is, whether wee are to be governed by the lawes of *England* and statutes of force in *Ireland* onely. First though I need not prove it, yet it is cleare we ought to bee so governed, *Matth. Paris. historia maiori fol. 121. Sir Iohn Darvis* discovery of *Ireland fol. 100. King Henry the second* held a Parliament at *Lismore* in *Ireland*, in which Parliament *Leges & consuetudines Anglie fuerunt gratanter acceptæ* by the representative body of this whole Nation, *Magna Charta* and other beneficiall statutes of *England*, are here in the red Booke of the Exchequer in, and since *King Iohns* time, and so is *Geruasius Tilberiensis* of the Course and Officers of the Exchequer, in the white booke of the Exchequer of *Ireland*, *leges & consuetudines Anglie* received in *Ireland* by Parliament & otherwise this appeares, 9. *Iohn. pat. membr. 2. 1. Henr. 3. pat. memb. 13. 10. Hen. 3. pat. membr. 4. 12. Henr. 3. claus. membr. 8.* by which words, and by the constant practise of all ages since, this kingdome was governed, and ought to be so by the law of *England*, as

1. *Quest.*
1. *Answer*

Arch.
Turris
London;

the law of the land, which law as it was alwayes here received, consists of three parts. First, the Common-law. Secondly, the generall customes of England. Thirdly, statutes here received. The Common-law that is cleared already, Customes as Tenant by the Curtesie. Inne-keepers to be responsible for things within their houses, or the like when we speake of a Custome in the law, it must be intended a generall Custome over the Realme, and no particular Custome. And this appeares by the yeare bookes of 37. *Henr. 6. fol. 5. 21. Henr. 7. 17. 18.* Particular customes, as *Garvelkind, Boreugh, English-tenant right*, or the like are not to be intended when wee speake generally of Custome, and these Customes are warranted by the Common-law of England, being not contrary to the same, but *prater legem*, so there may bee and are particular customes here *prater legem*, and yet not contrary to law, as in many Corporations and Countries, so the wives third of goods is good in England, by the custome of many counties and places, *F. N. B. 122. 7. Edward. 4. 21. 40. Edw. 3. 38. 17. Edw. 2. f. detinue 58.* Therefore it is not contrary to law, that such a custome is here, over all the kingdome, And yet if any man aske the question; by what law wee are governed, there is no proper answer,

answer, other then by the law of *England*. And for the statutes of *England* generall statutes were received in this kingdome, some at one time, some at another, and all generall statutes by *Poyninges Act*, anno 10. *Henr.* 7. but no other statute, or new introducing law, untill the same be first received and enacted in Parliament in this kingdome, and this may appeare by two declarative statutes the one 10. *Henr.* 4. the other 29. of *Henr.* 6.

Stat. Hi-
bernicae.
67, a.

The law of *England* as it is the best humane law, so it is a noble and sociable law, and for the more cleere discerning of the truth and equall administration of Iustice it referres many causes to their genuyn and naturall proceedings as *Maritime causes* to the Court of *Admiralty*, *Co. Institutes* 160. 361. *Stamford.* 57. b. *Co.* 5. 106. 107, *Constables Case*, and there the proceeding is by the *Civill law*, *Co.* 8 47. b. Matters beyond the Seas are determined in the Court of *constable and Marshall*; *Cookes institutes* 391. b. matters of *Latin* the law referres to *Grammarians*, *Com. fol.* 122. matters meereley *Ecclesiasticall* to bee tryed and determined in the proper Courts *Coke* 7. 43 b 8. *Co.* 68. 5. *Co.* 57. 1 R 3. 4 matters of *merchandize* to *Marchants*, 34. *Henr.* 8. Dy, 52 & 54. Many other cases upon this learning are to be found; *Co.* 9. fol. 50. 71. 72. *Strat. Marclads case*,

Yet in all these and the like Cases the tryall and determination thereof, are bounded and controuled by the rules of the Common-law, they are as Rivers which are necessary to run through the land, to helpe the inhabitants thereof, but if they overflow the bankes, the bankes are made higher and stronger to suppress their violent current, so in all the cases aforesaid, and the like. The Common-law hath limited the proceedings, if they exceede their bounds, witnesse the prohibitions in all our Bookes, and the statutes of *Provision* and *præmunire*, and *cases* there upon in many ages, by which it is manifest that the Supream, and governing law, are the Common-law, Common-customes, and statutes of the Realme, and the rest, but ministers and servants unto it, *brevia remediata* are onely by the Common-law, *mandatoria*, may bee in the said other cases, 7. Co. *Calvins case* Dy. 176.

So that the answer as to the words (in the generall) is short and ought to be positive.

As to the Courtes of equitie they have beene ancient in *England*, and the Courts of equity here, ought to bee guided by the constant proceedings in *England* in ages past, I meane not, by this or that Chancellor but by that naturall and just equity in the Courts here observed. This equitie is
of

of absolute necessitie in many cases (*ipsæ etenim leges capiunt ut jure regantur*) and therefore is included within the law of the Land, and not to be devided from it, as out of this writing it may be inferred.

As to the case of killing in rebellion to operate an Attaynder, if this bee no law in England it cannot bee law here, *vide Dame-hales case com. 263. a. 8. Edw. 3 20. fitz Dower 106. Cromptons Jurisdiction fol. 84. a.* by which it may be urged, that it is an Attaynder for that hee prevented the judgement of law by fighting against the Crowne, and by his killing therein, which ensued his unlawfull and trayterous act, but I observe to the contrary, the books of 7. Henr. 4. 32. b. & Cook. 4. 57. *Sadlers case.* I doe confesse that in England statutes may be *obsolete* as the statute of *VVilliam Butler*, by which the heire may have an action of wast, *Rastall 5. 21.* all the books are contrary, and so is the statute of *Merton* of disparagment as to an action to be brought for the same, so are some antiquated lawes, 40. Edw. 3. 42. 42. ass. 8. & 25. one present & aiding to murder was accessary, but now is principall 4. Hen. 7. 18. Com. 99. & 100. a Vicar could not anciently have an action against a Parson, 40. Edw. 3. 28. *Finchden* the law is now otherwise, and so of an entry

entry upon a *feoffee* with warranty *fit fol. 23. 24.* in the case of disparagement, give the reason, because that those statutes and lawes were never used, therefore *obsolete*, our case is nothing like, for life, liberty, and propertie being in debate, but an *obsolete* law is no law in force. Therefore the answer as to that is defective.

As to the case of a fellow upon his keeping and terrifying of the people, I conceive the answer is uncertaine and dangerous, if such a fellow raise an armed power against the Crowne and terrifie that way no doubt this is treason within the statute of 25. *Edw. 3.* or the equity of it, and by the statute of 10. *Hen. 7. cap. 13.* in *Ireland*, *statuto Hibernie fol. 62.* but if such terrifying be without raising armes, or by committing the same or the like felonies, it is no more then the case of purse-takers by force in the high wayes of *England*, many a man was terrified thereby in *Salisbury-plaine*, and yet no treason; and if there be no statute here, which is not in *England*, to make it treason certainly it cannot be treason; since the Conquest, writ of error have been brought for to reverse Iudgments given in the Kings Bench here, in the Court of Kings Bench in *England*, no course here which is contrary to law, can alter the law of *England*, therefore, to
what

what purpose is a declaration of Iudges here, contrary to the law there. This writ of error is a writ framed in the Register and appeares by common experience. I will offer a notable case which I saw adjudged in the Kings Bench in *England*, *Pasc. 18. Iacobi* for *Stafford* against *Stafford* in a writ of error for to reverse a Iudgment given in the Kings Bench in *Ireland* when *Sir VVilliam Jones* was Chiefe Iustice here, in an *ejectione firme*, for that in the declaration there was contained among other things *ducentas acras Montani*. *Sir VVilliam Jones* being in *England*, affirmed the course here, to have been so, and vouched many notable Presidents, thereupon an order was conceived that *Sir Iames Ley*, *Sir Humphry VVinch*, and *Sir Iohn Denham* knights, who were formerly Chiefe Iustices here should certifie the course, who made report that the course in *Ireland* was and ought to be, in writts originall and Iudiciall to be directed by the Register, in pleading to be guided by the books of entries, and thereupon the Iudgement was reversed, And the Chiefe Iustice *Mountague* said, that if they did not proceed in *Ireland* according to law, they should learne it, And so I conclude that the answer to the first Question, is insufficient.

As touching the second Question, which is Questio
concerning

concerning the Oath which this Iudges doe take, the question is whether the Iudges of the land doe take the Oath of Iudges? And if so, &c.

3. Answ.

The answer of the Iudges to the first part is, that they confesse they take the Oath of Iudges, which is specified amongst the statutes in 18. *Edw.* 3. and 20. *Edward.* 3. as I said before, and that they may not stay, hinder, or delay the suite of any subject or his judgement or execution there upon, otherwise then according to the law and course of the Court, where they sit under pretence of any act of state, proclamation, writ, letter, or direction under the great Seale, or privie Seale, or privie Signet, or Letter, or other Commandement from the Lord Lieutenant, Lord Deputy, Iustice, Iustices or other, chiefe Governor of this kingdom, most of which doth appeare by their Oath expressed, expressed in the said statutes, and the statute of 2. *Edw.* 3. 8. and the statute of 20. *Edw.* 3. as to the Barons of the Exchequer, and as they know no punishment due to the Iudges for their deviations and transgressions without other aggravation, so they know no punishment layd downe by any law against them for their deviations and transgressions, in hindering, staying, or delaying of Iustice, contrary to their said Oath
other

Other then what is declared in their said Oath, and the statute of 20. Edw. 3.

I conceive the answer is not a full and perfect answer to the *Question*. For where the *Question* is whether the Iudges under pretext of any act of state, proclamation, writ, Letter or direction under the great, or privie Seale, or privie Signet, or Letter, or other Commandement from the Lord Lieutenant, Lord Deputie, Iustice, or Iustices, or other chiefe Governor or Governors of this kingdom, they may hinder, stay, or delay the suite of any subject, or his judgement, or execution thereupon; if so, in what cases, and whether, if they doe hinder, stay, or delay such suite, judgement, or execution thereupon, what punishment doe they incur for their deviations and transgressions therein.

To this they answer, that they may not stay, hinder, or delay the suite of any subject, or his judgement, or execution thereupon otherwise then according to the law, & course of the Court, where they sit, under pretence of any act of state, proclamation, writ, letter, or direction, under the great or privie Seale, or privie signet, or letter, or other commandement from the Lord Lieutenant, Lord Deputy, Iustice, or Iustices, or other chiefe Gover-

nor, or Governors of this kingdome; wher as they ought to have expressed the particular of this exception, for by that clause, it is supposed, or may be strongly implied, that in some cases they may hinder, stay, or delay the suite of any subject, or his judgement, or execution thereupon, under pretext of any act of state, proclamation, letter, or direction under the great or privie Seale, or privie signet, or other Commandement from the Lord Lieutenant, Lord Deputy, Iustice, Iustices, or other chiefe governor, or governors of this kingdome, which they ought to have expressly layd downe, the question being if they may stay, hinder, or delay the suite of any subject upon any such pretext, then to set forth in what Cases, which ought to be particularly answered unto.

In the next place the *Question* is, if they doe stay, hinder, or delay such suite, judgement, or execution thereupon; then to set forth what punishment they doe incur for their deviation, or transgression therein.

Unto this they answer, they know no punishment due to the Iudges for those deviation, and transgressions without other aggravation.

This I conceive is an implication, that there is a punishment where there is matter of aggravation,

ration, and therefore it ought to be expressed what matter of aggravation they intend the same to be:

They further say, they know no punishment layd downe by any law against them, for their deviations or transgressions in hindering, staying or delaying of Justice contrary to their Oath, other then what is declared in their said Oath, and the Statute of Hen. 3. c. 13. to be a full answer, in re-

spect to the punishment layd downe in that Oath, is in a generality, viz. that the Iudges so offending contrary to their Oath, are to be at the Kings will of body lands and goods, which they should declare, and expresse how farre that punishment extendeth in their bodies, lands, and goods.

Whether imprisonment of their bodies, or in their lives, and whether in forfeiture of their lands goods, or how else?

The breach of an Oath is a very high offence, and the higher it is, that the matter it doth concerne is the greater, and therefore it is much, *secundum subjectam materiam*.

It is to be considered to whom the oath of a Iudge is made, and what matter it doth concerne. To the first the Oath is made to God, the King and to the Common wealth.

For the matter, it is concerning the true and equall administration and distribution of Justice to the people.

If the Iudge doe offend contrary to his Oath, he commits breach of the trust reposed in him by the King, besides the violation of his Oath. Look upon trust betweene Common persons. A man makes a Lease for yeares, the Lessee makes a scoffment, this is a forfeiture of his estate by the Common-law, by reason of the breach of trust. Lessee for life in an action brought against him prayes in ayde of a stranger: this is a forfeiture of his estate.

36. Hen.
6. 29.

A quid Iuris clamat brought against Lessee for life, he claymes a fee, which is found against him, this is a forfeiture of his estate. So much for breach of trust.

34. Hen.
7. 13.

To come unto a false verdict given by a Iurie, which is a breach of their Oath, they being sworn *ad veritatem dicendam*. For this false verdict an attaynt lyeth at Common law against the petit Iury.

The judgement at the Common-law in an attaynt importeth eight grievous punishments. 1. *Quod amittat liberam legem in perpetuum*. 2. *quod forisfaciat omnia bona & Catalla sua*, 3. *quod terra*

¶ *teneamenta in manus Domini Regis capiantur*, 4. quod uxores & liberi extra domus suas eiciantur, 5. quod domus sua prostrentur, 6. quod arbores sue extirpentur, 7. quod prata sua arentur, 8. & quod corpora sua Carceri mancipentur. So odious is perjury in the eye of the Common-law. It followeth therefore that the breach of the Oath of a Judge, *materia considerata*, in regard it tends to the subversion of Justice, is an offence of an higher nature deserving a farre greater punishment in his body, lands, and goods; as I conceive.

¶ This question is very short and as plaine, it is ^{3. quest.} no more then whether the Councell-table be a *Judic.* ^{3. answe.} *catorie*, in *Civill causes* betweene subject and subject for lands, goods, or Chattels, and by what law. The answer is wholly *ad aliud*. But it is answered fully by the great Charter capit. 11. 9. *Henr. 3. Communia placita non sequantur Curiam nostram*, Common-pleas, which are the pleas in question shall not follow the Kings Court, againe cap. 29. No Freeman shall be taken, imprisoned, put off his freehold, liberties & free customes, &c. other then by the lawfull judgement of his Peeres, as by the law of the land.

¶ This great assurance in the 38. Chap. of the same Statute was granted for the King and his successors

to all his people, and was confirmed in thiray Parliaments as I said before. *Coke. 3. the Pryor. Case.* by the statute of 3. Edw. 3. cap. 9. 25. Edw. 3. Cap. 4. 28. Edw. 3. cap. 3. 41. Edw. 3. cap. 1. & 2. 7. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

The great Charter is againe confirmed, and not only so but proceedings contrary to the same, before the King or his Counsell are declared voyde. The King is to observe and manayne the law, whel Iudge by his Oath, 48. Edw. 3. 5. is bound to doo right betwene the King and his people, and that right strengthens the Kings prerogative, preiudents or practise, contrary to so many statutes are of no use, in many ages past, entred charters were made upon the unjust liberties, which were alwayes removed by Parliaments. Yet I must confesse that, of all antiquity some pleas have bene hold in the Kings Royall house, as in the Court held by the Marshall of the Kings household for things arising within the Verge, *Fleta, lib. 2. cap. 2.* but when that Court exceeds its due bounds, declaratory statutes were alwayes made to meete them, as muchiefes in the common wealth, when they medled with land or the like, as appeares by the statute of *Articuli super Chartam* 28. Edw. 1. 15. R. 2. cap. 12. all these statutes My Lords, and many more to this purpose are undenyably of force in this kingdom.

and

and none of them can be with imputation said to be
obsolete or antiquated.

My Lords, they raise another doubt, viz that as
the King may grant cognizance of pleas to Cor-
porations, or the like, and therefore to the Coun-
cell-table; if this neede an answer, I will answer it
thus, that a grant of cognizance never was, nei-
ther can it be otherwise, then to proceede *per legem*
terrae, or *per iudicium parium*, & in the same manner
as Courts doe proceede at Common-law, and not
upon paper petitions; or summary hearings such
cognizance was never granted, the King is at losse
by such proceedings, he looseth fines upon origi-
nals, he looseth amerciaments, and fines incident
to every judgement at Common-law, as I said be-
fore, The subject undergoeth an inconvenience.
First the law will decline, writs originall will by
disuse be forgotten, Clerks who should draw them
discouraged to learne; heere proceedings out of
doores being the foundation of the law, and in
stead of regular and orderly proceeding, rude-
nesse and barbarisme introduced, the subject will
lose the benefit of his warranty and writ of error,
by which the law might relieve him from false
verdicts and erroneous judgments, he will lose the
benefit of his warranty, which might repair a pur-
chaser

chaser, in case his acquired purchase were not good. Whereas if a Iudge or Iuror doe wrong, the remedy is at hand, but against the Lord Deputy and Councell, who will seeke for it? therefore the countenance of this *Iudicature* in Common-pleas, is against the Kings prerogative, and the peoples just rights: both which the Iudges ought to maintaine, and likewise against the intent of your Lordships order.

My Lords, as in *England*, the said severall statutes were made to prevent the inconveniences aforesaid, one good statute was made in *Ireland*, 28. *Henr. 6. cap. 2. Irish statut. fol. 15.* which directs matters of *Interest* to be determined in the *Common-pleas*, matters of the *Crowne* in the *Kings-bench*, matters of *equity* in the *Chancery*: This law, if there were no more, regulates the proceedings in this kingdome.

The Iudges insist upon the words in the end of that statute, *viz. Saving the Kings prerogative. My Lords*, this was stood upon at the late great tryall in *England*, and easily answered, for by the *Common-law*, the King may by his prerogative, sue in any of the four Courts, for his particular interest, although it be contrary to the nature of that Court, for he may sue *a Quare impedit* in the *Kings Bench*,

Bench, & the like, yet so as the said suite be bounded by the rules of law, I will demaund a question whether the King may bring à *Quare impedit* in paper, at the Councell-board, the Kings now Attorney, I am confident will answer me, he cannot

Sir Thomas
Tempest
Knight.

The word *salvo* or saving is in construction of law of a thing in *esse* or *existente*, and no creative word, 26. *Ass. pla.* 66. and cannot in the Kings Case be construed to overthrow the law, nor many expresse, and positive acts of Parliament.

My Lords, in all humbleness and dutie I will and must acknowledge his Majesties Sacred and lawfull prerogative, whereof the King himselfe is the best expositor, in his answer to the *Petition* of right, *Poltons Stat. fol. 1433.* he declares that his prerogative is to defend the peoples libertie, and the peoples libertie strenghtens the Kings prerogative, the answer was a Kingly answer, and (*More majorum*) this is conformable to the great *Charter*, and to all the statutes before recited. The government of *England* being the best in the world, was not onely Royall, but also politicke, some other princes like *Cain*, *Nemrod*, *Esau*, and the like hunters of men, subverted lawes; The Kings of *England* maintayned them, and did never assume the power to change or alter the lawes, as appears by

Fortescue that grave and learned Lord Chancellor in King Henry the sixts time *de laudibus legum Anglia cap. 9. fol. 25.* and in the same Booke *cap. 36. fol. 84.* nor to take his peoples goods, nor to lay tax, nor tallage upon them, other then by their free consent in Parliament, this appeares by the *Booke Cases* in 17. *Henr. 4. fol. 14. 15. 16.* the great case of the *Awl-nage of London*, and in the *Case of toll-travers and toll-through* 14. *Henr. 4. 9 37. Henr. 6. 27. 8. Henr. 6. 19* all agreeing, nor to alter the nature of land as by converting land at Common-law to *Garvelkind*, or *Borough English* or *e conuerso*; as to the estate, otherwise as to the person of the King *Ple. Com.* the Lord *Barclyes Case fol. 246. 247.* Yet it is most true that the law of the land gives the King many naturall and great prerogatives, farre beyond all other men, as may appeare in the said *Case fol. 243.* but not to doe wrong to any subject, *Com. 246.* The person of the King is too sacred to doe a wrong in the intention of Law; if any wrongs bee done his ministers are Authors and not the King; And the Kings just prerogatives, by the Kings Royall assent in Parliament were bounded, limited and qualified, by severall Acts of Parliament, as if *Tenant in cap.* did alien at Common-law without licence, this was a forfeiture of his estate *Plo: Com. case of mines fol. 332.*

the statutes of 2. *Edw. 3. cap. 14.* makes this only finable, & the statute of *Magna Charta cap. 21.* takes away the Kings prerogative, for cutting woodes where he pleased: many other cases there are upon this learning.

By this great Iustice and bounty of the Kings of *England*, the Kings grew still greater and more permanent.

The people became free and wealthy, no King so great as a King of rich & free people. If the Councell-table may retaine cognizance of causes cōtrary to the Law, & to so many Acts of Parliament, why may they not avoyde all Acts of Parliament aswell? This no man will affirme, nor they intend.

My Lords, two objections seeme to stand in my way. First, the multitude of presidents countenancing the cognizance of the Councell-board in the matter aforesaid, some in ancient times, and of late in great clusters & throngs. Secondly, that in book 1. object. Cases it appeares, the Iudges of Law did take advice in their Iudgements with the Kings Councell, as 40 *Ed. 3. fol. 34. 39. Ass. placito primo 35. Edw. 3. fol. 35. 19. Edw. 3. fitz. Iudgement. 174.* 2. object.

In answer to the first, as for the multitude of presidents (*hinc ille lachrymæ*) there is our grieve, 1. Resp. I find in our Bookes that presidents against Law,

doe never bind, there is no downe right mischief. But a president may be called upon, to beare it up; *iudicandum est legibus non exemplis*, Cooke. 4. fol. 33. *Mittons case* Cooke 11. fol. 75. *Magdalen Colledges case* Cooke. 4. fol. 94. *Slades case*, *multitudo errantium non parit errori patrocinium*.

3. Resp.
ad 1. Ob-
ject.

I answer to the second that in those yeare books of *Edw.* 3. It is true, that the Iudges appealed to the Kings Councell for advice in law, but who gave the Iudgment? the Iudges, and what Iudgment? a legall Iudgement, and no paper or arbitrary Iudgment.

If this objection were materiall, I might answer further, that the Councell here may bee understood, the great Councell (*viz.*) the Parliament (*propter excellentiam*) *Vide Cooke*, 6. 19. 20. *Gregories case*. By the stat. of 4. *Edw.* cap. 3. 14. and 36. *Edw.* 3. c. 10. *Rastall*, fol. 316. Parliaments were then to be held once a yeare, the booke of 39. *Edw.* 3. fol. 35. in the case of a *formedon*; may well warrant this explanation of those books, the Bishops, Abbots, Earles and Barons mentioned in the said books, may be well taken to be the Lords house, which might sit by adjournements in those times of frequent Parliaments, My Lords, I kept you too long upon this Question, I will be as short in the

the next. And so I conclude the answer as to this point is no answer, and whether the matters therein comprized be of dangerous consequence I submit to your Lordships.

If the Chiefe Governor and Cotncell of this kingdome cannot heare or determine the causes aforesaid, surely the Chiefe Governor alone cannot doe it, all I have said to the third I doe apply to this Question, together with one president worthy your observation in 25. Edw. 1. Claus. m. 29. where I have an authenticke coppie (viz.)

Claus. viceesimo quinto Ead. primi m. 20.

4. Quest.
4 Answer

Archiv.
Turris
Londin;

De co-
munibus
placitis
per billas
coram
Iusticia-
riis Hi-
bernæ
nequa-
quam
termi-
nandis.

Rex dilecto & fideli suo Iohanni VVogan. Iusticiario suo Hibernie salutem; cum intellexerimus quod vos communia placita que totis temporibus retroactis, per brevia originalia de Cancellaria nostra Hibernie placitari, deberent, & consueverunt, per billas & petitiones vacuas jam de novo coram vobis deduci facitis, & etiam terminari, per quod, feodum sigilli nostri quo utimur in Hibernia, & fines pro breuibis dandis ad alia commoda que nobis inde solent accrescere diversimode subtrahuntur, in nostri & incolarum partium, illarum, damnum non modicum, & gravamen. nolentes igitur huiusmodi novitates fieri per quas nobis damna gravia, poterunt evenire, vobis mandamus quod si ita est, tunc aliqua pla-
cita

cita comunia, quæ per brevia originalia de Cancellaria nostra prædictæ de jure & consuetudine, hucusque visitata habent terminari per petitiones & billas coram vobis deduci, placitari, aut terminari de cætero nullatenus præsumatis, per quod vobis imputari debeat aut possit novum, incommodum, in hac parte.

Teste Rege apud Shestoniam, xxij. die Martij.

Convenit cum Recordis,
WVilliam Collet.

Your Lordships, may see that in *Edward the firsts* time the King took notice, First, that the said petitions were void. Secondly, that his revenues were thereby impaired. Thirdly, that it was against the Custome of the land of *Ireland*. Fourthly, that it was to the grievance of the people of *Ireland*. Fifthly, he comanded *John WVogan*, then Chiefe Governor, not to presume to deale in the like proceedings thereafter; I marvaile not a little, wherefore the Iudges in our time after so many acts of Parliament since 25. *Edw. 1.* should make any doubt or question to answer this cleerly.

3. Quest.
3. Answer

My Lords, I humbly desire not to be misconstrued in the debate of this Question, my meaning is not to pry into his Majesties just prerogatives.

tives. *Qui enim majestatem scrutatur Principis, corrumpet splendore ejus*, the old saying in English is as good, he that hewes a block above his head, the chipps will fall into his eyes. The Question warrants no such scrutinie, I may not officiously search into it. The Question is onely, whether grants made of monopolies to a subject be good in law, And whether by pretext of such grants the Kings free people may loose their goods by seisures, or may be fined, imprisoned, pillored, & papered, &c. Those things have been done and acted in many cases, where the Monopolites were Iudges and parties, in which case if an act of Parliament did erect such a Iudicatorie, it were void, as against naturall Iustice, *Cooke* 8. 118. a. *Doctor Bonhams case*; I speake to that thing, that odious thing, Monopolie, which in law is detestable *Cooke* 11. 53. b. the *Taylors of Ipswich case*, by which any subject is hindered to exercise his lawfull trade, or lawfully to acquire his living, and the Condition of a bond being to restraine any man from his trade, the bond is void in law, 2 *Hen.* 5. 5. b.

In this case the Iudge *Hull* swoare (*par Dieu*) if hee who tooke this bond, were present he would fine him to the King, and commit him to prison, by which case I observe, that the consent of the
partie,

partie cannot make it good; That a Patent of any such *Monopolies* is a grievance against the Commonwealth, and consequently voyd in law, the case was of *Cards* which is observable *Cook* 11. 85. 86. 87 &c. & *Darcy & Allens Case* There is a Condition tacite or expresse in every grant of the Kings, *Ita quod patria magis solito non gravetur vel oneretur, vid. Fitz. N. br. fol. 222. Cod. ad quod damnum.* This learning is so cleare as to *Monopolies* thus stated, that I will dwell no longer upon them, as I hope they may no longer reside among us. The answer is insufficient; as in the case of a new invention of manufactory or the like; in such cases a Patent may be good they say for certaine yeares, whereas the yeares ought to be competent, ten thousand years are certaine, but not competent, and they who offend are to give damage in an ordinary Court of Justice to the Patentee, unto which they adde (or otherwise) Oh, this arbitrary word) the like arbitrary advice of others (I feare) hath occasioned this *Question*. Where *Monopolies* were clearly voyde, punishments were inflicted upon. The honest man, and the *Monopolist* escaped, they answer nothing to the losse of goods, heavy fines, mutillation of members, the before recited statutes direct cleare answers to these particulars.

My

My Lords, the statute of *Magna Charta* cap. 30. (*quod omnes Mercatores tam indigenae quam alienigenae*) have free passage *sine omnibus malis tollentis*, & *consuetudinibus ex Anglia & in Anglia, nisi antea publice prohibiti fuerunt*, the subsequent statutes declaring many oppressions and grievances occasioned by restraints in trade and Commerce made trade free for victuall and merchandises, and in them *Nisi, &c.* is omitted as the statute of 9. *Edw. 3. c. 1. 25. Edw. 3. cap. 2. 2. Rich. 2. cap. 1. 11. Rich. 2. cap. 7. 16. Rich. 2. cap. 1.* these statutes give double damage to the party and the offender to be imprisoned.

The statute of 21. *Jacob, c. 3.* in England, against *Monopolies*, in the exception of new inventions limits the time to a reasonable number of yeares, *viz.* fourteene yeares or under, whether the hea-
vie punishments aforesaid, can be in this case especially the private interest of a subject being therein onely or mainly concerned, *Magna Charta* cap. 29. gives me a cleere answer and satisfactory; *Nul-
lus liber homo capiatur, imprisonetur, disseisietur vel ali-
quo modo destruat, &c. nisi per iudicium parium &
legem terrae*, if this be law or a lawfull statute as no doubt it is, the question is sooné answered.

My Lords, by this time you know, how the In-
nocent was actually punished, in these cases; Now

M

it is

it is time, and not improper to shew how the No-
cent ought to be punished, who tooke unlawfull
Monopoltes, & seised the subjects goods by violence,
imprisoned, fined, mutilated, and destroyed the
Kings people, and caused all the evils that depen-
ded therevpon; For that, *my Lords*, it is not with-
in my charge, yet I hope it shall not remaine un-
represented by the house of Commons, nor un-
remembered by your Lordships in due time.

6. Quest.

6. Answer

To this the Iudges answered nothing, but with
a reference to their answer to the third, whereas in
truth this comprehends two matters besides of
great weight and consideration, first whereas the
third question concerneth the decision at Coun-
sell-board of matters of interest onely, This que-
stion is of matters of punishment, in an extrajudi-
ciall way, secondly this question demands know-
ledge of the punishment due to such as vote for
such extrajudiciall punishments, to these mayne
matters there is no answer at all.

My Lords, the statutes and authorities before
mentioned upon the third and fourth questions
against the determination at Councell-board, or
before the chiefe Governor in matters of interest,
do cleare this businesse, as to the punishments de-
pending upon those interests, although not *de consue-*

uer-

verso. And as for such as voted, and acted therein if they be sworn Iudges of the law, the before recited Oath of 18. Edw. 3. declares enough.

His Majesty at his Coronation is bound by Oath to execute justice to his people according to the lawes, this great trust the King commits to his Iudges, who take a great Oath to discharge this trust, if they sayle therein. *Sir William Thorp* in *Edward* the 3. time for breaking this oath in poore things, was indicted thus. *Quia predictus Villielmus Thorp habuit Sacramentum Domini Regis erga populum suum, ad custodiendum, illud fregit malitiose, false & rebelliter, quantum in ipso fuit*, this extends to a Iudge onely who tooke that Oath, & *habuit leges terræ ad custodiendum.*

The trust betweene the King and his people is threefold; First as betweene Sovereigne and Subject, Secondly, as betweene a Father and his Children, *unde Pater Patriæ*; Thirdly, as betweene Husband and Wife, this trust is comprehensive of the whole body politicke, And for any Magistrate or private person to advise, or contrive the breach of this trust in any part, is of all things in this world the most dangerous (*væ homini illi.*)

First, I doe conceive that an act of state or Proclamation cannot alter the Common-law, nor re-

7. Quest.

7. Answer

strayne the old, nor introduce a new law, and that the same hath no power, or force to bind the goods lands, possessions, or inheritance of the subject, but that the infringing thereof is onely a contempt, which may bee punished in the person of the delinquent, where the Proclamation is consonant, and agreeable to the lawes, and statutes of the kingdome, or for the publicke good, and not against law, and not otherwise punishable.

I do conceive, that a Proclamation is a branch of the Kings prerogative, and that the same is usefull and necessary in some cases, where it is not against the law, wherein the publicke weale is interested, or concerned, but that any clause therein, contayning forfeiture of the goods, lands, or inheritance of the subjects, is meerely voyde; for otherwise this inconvenience will ensue, That Proclamations or acts of state, may bee made in all cases, and in all matters to bind the libertie, goods, and lands of the subjects; and then the Courts of Iustice that have flourished for so many ages may be shut up, for want of use of the law, or execution thereof, and there is no case where an offence is committed against law, but the law will find out away to punish the delinquent.

The

The King by his proclamation, may inhibit his subject that he shall not goe beyond Sea out of this Realme without his licence, and this without any writt, or other Commandement to his subject. for perchance the King may not finde his subject, or know where he is, And if the subject will goe out of the Kings Realmes contrary to this proclamation, this is a contempt, and he shall be fined to the King for the same, as saith *Fitz-Herbert*, that such a proclamation can prohibit the Kings subjects to repayre into *England*, for *England* is our Mother, and though the Sea divide us, that Sea is the Kings, and therefore it is not *pars extra* in this sense.

Natura
Br. fol.
83. in le
Brieve
de secu-
ritate
inveni-
end.
quod
non se
divertat
ad par-
tes ex-
tras pars
extra
cannot
be in-
tended
the Kings
domini-
ons.

It seemes by the Lord Chauncellor *Egertons* argument upon the case of *post nati*, that a proclamation cannot binde the goods, lands, or inheritance of the subjects.

Fol. 12.
& 13.

A provision was made in *hac verba*, *Promissum est coram Domino Rege Archiepiscopis, Comitibus, & Baronibus quod nulla assis ultima presentationis de caetero capiatur de Ecclesiasticis prebendis, nec de prebendis*, but I doe not finde any forfeiture or penaltie upon the libertie, goods, or lands of him that would bring an assize of *Daren*, presentment for a prebendary.

Natura
Br. 32.
19. Hen.
3. Fitz
Her. Da-
rien
present-
ment 23.

Ideo

2. Hen. 3.
fitz Her.
Dower.
179.

I doe finde that a provision was made in *hac*
verba Promissum est à Consilio Regis quod nullus de
poteſtate Regis Francie respondeat in Anglia antequam
Anglici de jure suo in terra Regis Francie, &c. Yet
by that provision no forfeiture upon the lands, or
goods of him who sued a Frenchman in England at
that time.

35. Henr.
p. 26.

It is true that a Custome may bee contrary to
the law, and yet allowable, because that it may
have a lawfull commencement, and continuall
usage hath given it the force of a law, *Consuetu-*
do ex certa rationabili causa usitata pri-dat communem
legem, but no proclamation or act of state may
alter law.

For example sake, at Common-law a Procla-
mation cannot make lands devisable, which are
not devisable by the law, nor alter the course of
descent.

37. Hen.
6. 17. 47.
Edw. 3. 4.

The King by his Letters-patents cannot doe
the same, nor grant lands to bee ancient *demesne*
at this day, nor make lands to be descendible ac-
cording the course of *Gavelkind* or *Borough En-*
glish, unlessse that the custome of the place doth
warrant the same, nor *Gavelkind* land to be descen-
dible according the course of law, *a fortiori* an act
of state, or proclamation, which I hold to bee of
lesse

lesse force then the Kings patent under the great Seale cannot doe it.

And in the case of *Irish Garvelkind*, it is not the proclamation, or act of state, that did abolish, or alter it, but the very custome was held to be unreasonable and repugnant to law.

If an act of state bee made, that none within the kingdome shall make *Cards* but *John at Stile*,^{11. Co. 84.} this act is voyde, for the King himselfe, cannot grant a Patent under his great Seale, to any one man for the sole feazance of *Cards*; So it is of all proclamations or acts of state, that are to the prejudice of Trafficke, trade, or Merchant affaires, or forraying of *Monopolies*, or against the freedom and libertie of the subjects, or the publicke good, as I said before.

Also if proclamations, or acts of state may alter the law, or bind the libertie, goods, or lands of the subjects, then will acts of Parliaments bee to no purpose, which doe represent the whole body of the kingdome, and are commonly for creating of good and wholesome lawes.

Therefore I conceive, that all proclamations made against law, are absolutely voyde, and that the infringers thereof ought not to loose, or forfeite their liberty, goods, or lands.

And

And for the punishment of such Judges that vote herein, I referre to the sixt, they deny to answer to this question.

2. Quest.

8. Answer

This answer is generall and dangerous withall, it is generall, viz. they know no ordinary rule of law for it, they ought to declare the law against it, the right use of it here they commend, and yet they doe not describe that right use, therefore they commend two things, the one the life of a subject to be left to Marshall law in time of peace, the other they leave it likewise discretionary when they describe not the right use, their last resort is to the Kings prerogative.

I have said before, that Lawyers write the King can doe no wrong, and sure I am our King meanes nowrong, the Kings of *England* did never make use of their prerogative to the destruction of the subject, nor to take away his life nor libertie, but by lawfull meanes. I conceive this advise should become the Iudges, other advise they find not in their law Bookes; The statute of *Magna Charta* cap. 29. and 5. *Edw. 3. cap. 9.* the petition of right, the third of King *Charles* in full Parliament declared, Tell them, nay doe convince them, that no man in time of peace can bee executed by Marshall law.

9. Quest.

9. Answer

bnA

My

My Lords, I could wish the Iudges had timely stood in the right opposition to the drawing of causes proper for the Kings Courts to an *aliud examen*, the improper and unlawfull examen thereof on paper petitions, whereby the Kings Iustice, and Courts were most defrauded, whereas an arbitrement being a principall meane to compose differences arising betweene neighbours, and to settle amitie betweene them, without expence, of time or money was a course approved by law, all our Bookes are full of this.

It is by consent of parties by arbitrators indifferently chosen, bonds for performance thereof are not voyde in law, and Iudgements given upon arbitrements, and such bonds in our Bookes without question or contradiction to the lawfulnessse of an arbitrement or bond in proper Cases, the principall good wrought by them, was the hindering of suites, & debates at law, therfore that exception fals of it selfe, then I am to consider, how far an Oath in the particular is punishable, I will not speake of an Oath exacted, or tendered, that is not the question, the question is of a voluntary Oath; which the arbitrator cannot hinder, I speake not to the commendation of any such Oath, nor doe I approve of any Oath, other then

N

that

that which is taken before a Magistrate, who derives his authoritie from the King, the fountaine of Iustice, but onely how farre this Oath is punishable by the late statute, 10. *Caroli* fol. 109. a prophane Oath is punished by the payment of twelve pence, & no more, *vide stat. of: Marl. cap. 23. 52. Hen. 3. viz. Nullus de cetero possit distringere liber' tenentes suos &c. nec jurare faciat libere tenentes suos contra voluntatem suam, quia nullus facere potest sine precepto Domini Regis*, which statute teacheth us, that an exacted or compulsive Oath, is by the Kings authority, a voluntarie Oath is not reprehended, 19. *Edw. 4. 1. 4.* It was not reprehended in the case of an arbitrement, this voluntarie Oath is punishable in the *Star-chamber*, as the Iudges would affirme, which I conceive to bee against the law: First, for that wee cannot learne any president in *England* for it, It was but lately introduced here, therefore the house of Commons is unsatisfied with the answer to this question, in *Boyton* and *Leonards case* in the *Star-chamber* in *Ireland*, *Boyton* was dismissed in a Case to this purpose about the yeare 1630. or 1631.

30. quest.
16. Answ.

It hath beene the late introduced course of the *Castle-chamber*, and *Councill-table* not to admit the party censured to the reducement of his fine, before

fore hee acknowledged the iustnesse of the sentence pronounced against him, and that for divers reasons, First, the course of a Court being as ancient, as the Court, and standing with law is *Curie lex*, as appeareth by our bookes, 2. Co. 16. b. *Lanes case* 17. Long 5. Edw. 4. 1. but if it be a course introduced *de novo* in mans memorie, or a course that is against law, it cannot be said to be *lex Curie*, for *consuetudo licet sit magne authoritatis nunquam tamen præjudicat manifestæ veritati.*

Let us therefore examine the course alleadged here, in both those points, and if it be found to faile in eyther of them it is to be rejected.

As to the first, I cannot find or read any president of it untill of late, and the usage of it for a few yeares cannot make it to be *cursus Curie* which ought to bee a custome used time beyond the memory of man.

As to the second, it is confessed by the Judges, that they know no law to warrant this courle, let us see then whether it be against law, or standeth with the law, and I conceive it is against law for divers reasons.

First, by the Common-law, if a judgement be given against a man after a verdict of twelve men, which is the chiefe and cleare prooffe which the

Law looketh upon, or upon a demurrer after solemne argument he shall in the one case have an attainte against the lury, & in the other a writ of error to reverse the judgement; but in this case by the confession of the justnesse of the sentence all the meanes to reverse the sentence is taken away, and therefore contrary to law, and reason. Whereas by the Common-law, fines ought to bee moderate *secundum quantitatem delicti in reformationem & non in destructionem*, of late times, the fines have beene so high in destruction of the party in the *Castle-chamber*, as his whole family and himselfe, if hee did pay the fine should bee driven to begge, and without performance of the sentence hee could not be admitted to reverse the sentence, in respect of all which, howbeit in his conscience he is not guiltie, yet to gaine his libertie, and save part of his estate, hee is necessitated to acknowledge the justnesse of the sentence, so that the confession is extorted from him, and consequently is against law.

Third reason if the fine were *secundum quantitatem delicti*, as it ought to be without danger of destruction, the reducement of the fine had not been so necessarie: and therefore no just ground for this confession.

Lastly

Lastly, the confession of the party after sentence doth rather blemish the sentence then any way cleare it, for the confession comming after the sentence, which ought to be just in it selfe can adde nothing to it but draw suspicion upon it, and in that respect a confession is strayned, the racke used by the course of the Civill law in criminall causes, to cleare the conscience of the Iudge to proceede to sentence, is intollerable in our Common-law.

And therefore this course being an innovation against law, & without any reasonable ground, the said Judges ought in their said answer to declare so much, to the end a course might bee taken for abolishing the same.

This answer I will not now draw into question, 11. quest.
11. Answ. I could wish the rest were answered no worse.

What power have the Barons of the Court of *Exchequer* to rayse the respite of homage arbitrarily, &c. 12. quest.
11. Answ.

Vnto this they answer, that untill the Kings Tenant by knights service in *capite* hath done his homage, the ancient course of the *Exchequer* hath beene, and still is, to issue proceesse, to distrayne the tenants *ad faciendum homagium*, or *ad faciendum finem pro homagio suo respectuando*, upon which proceesse

cesse the Sheriffe returnes issues, and if the tenant doe not appeare, and compound with the King to give a fine for respite of homage, then the issues are forfeited to the King. But if the Kings tenant will appeare, the Court of the *Exchequer* doth agree with him to respite his homage for a small fine.

Vide 1.
Henr. 7. 9.
a. pre-
scription
to im-
pound
Cattle
untill a-
mends be
done ac-
cording
to his
will, not
good.

They say further, that it resteth in the discreti-
on of the Court by the rule of the Common-law
to lay downe a fine for respite of homage, accor-
ding to the yearely value of the said lands, which
I conceive to be very unreasonable and incon-
venient, that it should lye in the power of any to
assesse a fine for respite of homage, such as to him
shall be thought meete in discretion, for if so hee
may raise the fine to such a summe, as may exceed
the very value of the lands. Neyther hath the
same beene the ancient course, for it appeares by
severall ancient Records, and by an Order of the
Court of *Exchequer* made *Termo pasce* 1607. that
there should be payed for respiting of homage for
every Towneship xx. d. *Irish*, and for every Man-
nor xxx. d. *Irish*, and that such as hold severall
houses, acres, or parcels of land, which are not
Mannors, nor Towneship shall pay for everie
hundred and twentie Acres of Land, Meadow, and

pasture, or of any of them xx. d. *Irish*, and no more, and according to that rate, and proportion if a greater, or lesser number of Acres, and for every house without ground iiii. d. *Irish*, and of Cottages, or Farme houses which bee upon the Lands, no fine to bee payed for them solely alone.

This appears by severall Records in Hen. 6. & Hen. 7. time in the second Remembrancers Office in Ireland. 24. Hen. 8. B Fealty & homage 84

And I conceive where a man holdeth severall parcels of land of the King by severall homages, that in such case he is to pay but for one respite of homage onely and no more, for that a man is to doe homage but once, and consequently to pay for one respite of homage onely.

The late course in the *Exchequer* here hath been contrary, whereas in their answer they goe in the *Exchequer*, according to the statute of *primo Iacobi* cap. 26. in *England*, under their favour they goe cleare contrary, for that statute was made in confirmation, and pursuance of former Orders in the *Exchequer*: Whereas the Barons here goe directly contrary to the ancient course and Order of the *Exchequer* in this kingdome, more of this in my reason or ground for this question. So I conclude their answer to this is short.

My Lords, the question containest two points, 13. quest. 13. Answ.
First, whether the subject of this kingdome is

ccn.

cenſurable for to repayre into *England*, to appeale to his Maieſty for redreſſe of injuries, or for his lawfull occaſions; Secondly why, what condition of perſons, and by what law?

The firſt part of the Iudges their answer is poſitive and full, *viz.* They know no law or ſtatute for ſuch cenſure (nor I neyther) and could wiſh they had ſtayed there. In the ſecond part of their answer, they come with an *if*, *viz.* unleſſe they be prohibited by his Maieſties writ, proclamation, or command, and make mention of the ſtatute of 5. *Rich. 2. cap. 2. in England*, and 25. *Henr. 6. cap. 2. in Ireland*, I will onely ſpeake to the ſecond part of this answer.

My Lords, the houſe of Commons in the diſcuſſion of this point tooke two things into conſideration, Firſt what the Common-law was in ſuch caſes; Secondly, what alteration was made of the Common-law by the ſtatute of 5. *Rich. 2. cap. 2. in England*, and 25. *Henr. 6. cap. 2. in Ireland*, as to the ſubjects of *Ireland*. As for the firſt the Register hath a writ framed in the point, *viz.* the writ *De ſecuritate in veniendā quod ſe non diſvertat ad partes extras ſine licentia Domini Regis*, *Fitz. Natur. br. fol. 85*; the words of this writ cleares the Common-law in the point, it begins with a *datum eſt nobis intelligi*,
Ec.

¶ The King being informed that such person or persons in particular doe intend to goe, whether *ad partes externas*, viz. foraigne Countries, to what purpose, to prosecute matters to the prejudice of the King & his Crowne, the King in such a case by his writ, warrant, or Command under the great Seale, privie Seale, privy Signet or by proclamation, may command any subject not to depart the kingdome without the Kings licence; this writ is worthy to be observed, for the causes aforesaid therein expressed, the writ extendeth only to particular person or persons, & not to all the subjects of the kingdome, no man can affirme that *England* is *pars externa* as to us, *Ireland* is annexed to the Crowne of *England*, and governed by the lawes of *England*: our question set forth the cause, viz. to appeale to the King for Justice, or to goe to *England*, for other lawfull causes, whereas the said writ intends practises with foraigne Princes to the prejudice of the King and his Crowne; At the Common-law, if a subject in contempt of this Command went *ad partes externas*, his Lands, and goods ought to be seized, 2. & 3. *Philip. & Mary Dy. 128. b.* and yet if the subject went to the parts beyond the Seas before any such speciall inhibition, this was not punishable before the statute of

3. *Rich. 2. cap. 2.* as appeares, 12. & 13. *Elizab. Dy.* 296. a. So that before the inhibition, the law was indifferent, now the question is at Common-law, whether the subject of *Ireland* having no Office, can be hindered to appeale or goe to the King for Iustice: The King is the fountaine of Iustice, and as his power is great to command, so the Scepter of his Iustice is as great, nay the Scepter hath the priority, if any be, for at his Coronation, his Scepter is on his right side, & his Sword on his left side to his Iustice he is sworne, therefore if any writ, Commandement or proclamation bee obtayned from him, or published contrary to his Iustice, it is not the act of the King, but the act of him that misinformed him, then will I adde the other words of the question, *viz.* or other his lawfull occasions, as I said before in the case of a writ of error in the Kings Bench of *England*, or in the Parliament of *England*, which are remedies given by the law, therefore the Common-law doth not hinder any man to prosecute those remedies which are given to everie subject by the same. A *scire facias* may be brought by the King in *England* to repeale a patent under the great Seale of *Ireland* of lands in *Ireland*, 20. *Henr. 6. fol. a.*

An exchange of lands in *England* for lands in
Ireland

Ireland is a good exchange in law, 8. ass. placit. 27. 10. Edw. 3. fol. 42. tempor. Edw. 1. Fitz voucher 239. What law therefore can prohibit any subject for to attend this *scire facias* in *England*, or to make use of his freehold got by exchange.

The law being thus, then it was considered, what alteration was wrought by one branch of the statute of 5 *Rich. 2. cap. 2.* by which the passage is stopped out of the kingdome (Lords, notable Marchants, and the Kings souldiers excepted) I conceive this statute doth not include *Ireland*, I never heard any *Irishman* questioned upon this statute for going into *England*, nor any *Englishman* for comming into *Ireland* untill the late proclamation by the statute 34. Edw. 3. c. 18. in *England*, all persons which have their heritage or possessions in *Ireland*, may come with their beasts, corne, &c. to and fro, paying the Kings dues. The statute of 5. *Rich. 2.* did never intend by implication to avoyde the said expresse statute of Edw. 3. betweene the Kings two kingdomes, being governed by one law, & in effect the same people, the words of the statute of 5. *Rich. 2.* are observable, the principall scope of it is against the exportation of *Bullion*, in the later part there is a clause for licences to be had in particular Portes, by which I con-

ceive that the Customers of those Portes may grant a let passe in such Cases.

It is therefore to be considered, whether that branch of the said statute of 5. Rich. 2. was received in *Ireland*, I thinke it is cleare it was not, for by the statute 10. Henr. 7. cap. 22. in *Ireland*, all the generall statutes of *England* were received in *Ireland* with this qualification, *viz.* such as were for the Common and publicke weale, &c. And surely it cannot be for the weale of this kingdome, that the subjects here be stayed from obtayning of Iustice, or following other lawfull causes in *England*.

The statute of 25. Henr. 6. cap. 2. in *Ireland*, excuseth *absentes* by the Kings command, and imposeth no other penaltie; so that upon the whole matter, this question is not answered.

14. quest.

14. Answ.

For so much as they doe answer of this question, the answer is good, for there is no doubt to be made but *Deaneries* are some donative, some elective, and some may be presentative according to the respective foundations.

I will only speake of a *Deane de facto*, if a *Deane* bee made a *Bishop* and hath a dispensation *Decanatus dignitatem in commendam* in the *retinere*, the confirmation of such a *Deane* is good in law. This was

was the *case* of *Evans* and *Acough* in the Kings Bench in *England Ter. 3. Caroli*, where Doctor *Thornborow* Deane of *Torke* was made *Bishop* of *Limericke* with a dispensation to hold in the *retinere* after his patent, and before consecration it was adjudged his confirmation was good; and yet if a Deane be made a *Bishop* in any part of the world, this is a *Cession*, *Co. 5. 102. a. VVindsors case, Davis Rep. 42. 43. &c.* The Deane of *Fernes* his *case*, & 18. *Elizab. Dy. 346.* the confirmation of a meere *Lai-*
cus being Deane is good, though he be after deprived, 10. *Eliz. Dy. 273. 12. & 13. Elizab. Dy. 293.*
 although the Deane be after deprived by sentence declaratorie, yet his precedent confirmations are good.

*Vide 2.
 & 3. Phil.
 & Marie
 123. b.*

So I conceive that a Deane, who hath *stallum in Choro & vocem in Capitulo* during all the time of his life, and never questioned, and usually confirmed all Leases without interruption is good; And to question all such acts, 40. 50. 100. yeares after, is without president especially in *Ireland*, untill of late yeares, and in this kingdome few or no foundations of *Bishopricks* or *Deaneries* can be found upon any Record, therefore I conceive the Iudges ought to answer this part of the question.

My

35. Quest.

35. Answ.

My Lords, I know you cannot forget the grounds I layd before for this question, nor the time nor the occasion of the issuing of *Quo warrantoes*, nor what was done thereupon in the Court of Exchequer.

Now remayneth to consider of the answer to this positive question, the answer is too generall, *viz* the Parliament is concerned therein, and so are two other Courts of Iustice, and likewise the Kings prerogative is interested therein, wherefore they cannot answer till the matter come in debate and be argued before them.

The consideration of the Court of Parliament will much conduce to the clearing of this question, Co. preface to the *fourth Reporte*, the exposition of Lawes ordinarily belongeth to the Iudges, but (*in maximis difficillimisq; causis ad supremum Parliament' Iudicium*) Cooke preface to the *ninth Report*, describes that supream Court in this manner (*si verustatem spectes est antiquissima, si dignitatem, est honoratissima, si jurisdictionem, est capacissima*) of this enough, the learning is too manifest, that it is the Supream Court, may the primitive of all other Courts; to that Court belongs the making, altering or regulating of lawes and the correction of all Courts and ministers. Looke upon the members

members of it, first the King is the head, who is never so great nor so strong, as in Parliament where he sits insconced with the hearts of his people; the second are all the Lords Spirituall & Temporall; the third the knights, Citizens & Burgeses, these three doe represent the whole Commonwealth. Looke upon the causes for which they are called (*Circa ardua & urgentia negotia Regni*) looke upon the priviledges of it, if any member or members servant thereof bee questioned, or any thing ordered against him, in any other Court sitting the Parliament, or within forty dayes before or after, all the proceedings are voyde by the lawes and statutes of this Realme, The not clearing of this question is against the Kings prerogative, which is never in greater splendor or Majestie then in Parliament, and against the whole Commonwealth therein concerned as aforesaid, the King hath foure Councels, the first is *commune concilium*, which is this Councell, secondly *Magnum Concilium*, which is the Councell of his Lords; thirdly the privie Councell for matters of estate; fourthly the Iudges of his law, *Co. institut. 110.a.*

Co. Inst.
109.

Stat. Hib.
3. Edw. 4.
cap. 1.

Then by what law or use can the inferiour of these foure Councels question the first Supream and mother Councell, I know not, the state of the question

question considered, which is of *Burroughs*, who anciently and recently sent to the Parliament, by the same law, that one member may bee questioned, forty eight members may bee questioned as was done in our case in one day, six such dayes may take away the whole house of Commons, and consequently Parliaments, especially as this case was, for upon the returne of the first summons foure and twenty Corporations were seized, the learning therefore is new, that it should rest in the discretion of the Sheriffes, who might make unfaithfull returnes, and of three Barons in the Exchequer, who have no infallibilitie, to overthrow Parliaments, the best Constitutions in the world. Search hath beene made in the two bookes of *Entries*, in old *Natura brevium*, and in all the yeare bookes that are printed, there is not one president that in any time ever so badde, such a *Quo-warranto* was brought in, *Co. entries* 527. a *a Quo-warranto* was brought against *Christopher Helden*, and others to shew cause, why they claymed such a *Borrough*, &c. which is nothing to our purpose, the *quo-warrantoes* in the question, and those which were in the Exchequer, did admit them *Borroughs*, and yet required them to shew cause why they sent Burgesles to the Parliament, this is *oppositum*

scum in objecto, to admit them Burges^{es}s, and to question their power to send Burges^{es}ses, which were formerly, both anciently and recently so admitted in Parliament, *Master Littleton*, the first booke we reade cleares this question, *sectione 164.* There are ancient Townes called *Borroughs*, the most ancient Townes of *England*, all Cities were *Borroughs* in the beginning, and from them come *Burges^{es}ses* to the Parliament, so that in effect if an ancient *Borough*, *ergo*, they sent *Burges^{es}ses* to the Parliament; all these ancient Townes in *England*, did remayne of Record in the Exchequer, 40. *ass. plac. 27.* In *Ireland* they doe remayne of Record in the Parliament Rolles, the tryall of them is by the Record it selfe, and not otherwise; If a Towne send *Burges^{es}ses* once or twice, it is Title enough to send ever after, 11. *Henr. 4. 2.* So if a Peere called once by writ, and once sitting as a Peere, *Co. institut. fol. 9. b.* hee is a Baron ever after.

In the foure ordinary Courts they have privilege for the meanest of their members, or servants, why not the Parliament. It was the custome of the ancient grave Iudges to consult with parliaments in causes of difficultie & weight, a parliament was then to be at hand, they did not stay

to advise with them in a point which concerned the parliament, so neerely and which was of the greatest weight of any cause that ever was agitated in the kingdome: In our books, & all the entries it is true and cleare, that *Quo-warrantoes* are brought and ought to bee brought against such as clayme priviledges, Franchises, Royalties, or the like flowers of the Crowne: but to question Burgessees in this nature is to question the Kings prerogative in an high degree; priviledges take from the King, parliaments adde, and give unto him greatnesse and profit, in parliaments he sits essentially, in other Courts not altogether so, but by representation, what greater disservice could bee done the King, then to overthrow parliaments, how shall Subsidies bee granted, or the kingdome defended, how shall *ardua Regni* be considered? Oh the Barons of the Exchequer, I wot will salve all these doubts.

I may not forget *My Lords*, how the law of the land, & the whole Common-wealth is herein concerned, and upon that I will offer a Case or two, If a statute be made wherein the private interest of a subject, or the generall interest of the Common-wealth be enacted, the King by his Letters-patents cannot dispence with this statute, Co. 8. 29.

a. Princes

a. Princes case, though they be with *à non obstante*, Co 4. 34. nor make any grant, *Non obstante* of the Common-law, therefore I conclude this question. Bozooks case.

First, that it is against the Kings prerogative, to issue such *à Quo-warranto*, as is here stated. Secondly it is against the Common-wealth, as destructive of parliaments, and consequently of government. Thirdly this is no priviledge but a service done to the King & whole Common-wealth, which cannot receive so much as a debate but in parliament. Fourthly all the proceedings in the Exchequer, touching this parliament were *Coram non iudice*, as was already voted in both houses, as for the punishment, we come not to urge your Lordships to punish other then with reference to that which I said before, *viz.* the Oath.

These two questions have so neere a relation, the one to the other meeting in the Center of the *Castle-chamber*, that I will speake to them at once or as to one question. 16. quest.
16. Answ.
17. quest.
1. Answ.

My Lords, if that golden meane, and mediocritie which regulated the power of that great Court in former times had not beene of late converted and strayned unto that excesse wee saw, these questions had never beene stirred, but many things being extended to their uttermost Spicare, or I

feare beyond the same enforce mee, although unwillingly and slowly, to looke upon our lawes and just rights.

The answer to the sixteenth, *viz.* whether Iurors giving their verdicts according to their conscience, may be punished in the *Castle-chamber* by fines excessive, mutilation of members, &c.

I finde in my Lord *Barcklayes case*, *placit. Com.* 231. from the beginning, the usuall tryall at Common-law was devided betweene the Iudges and the Iurors, matters of fact were and are tryable by the Iurors, and matters in law by the Iudges, the antiquitie of this tryall appeares, *Glan. fol. 100. b. in Henr. the seconds time, Bracton 174. Briton, fol. 130. a. Fortescue, de laudibus legum Angliae, fol 54. & 55.* So much being cleared they being, *Iurati ad dicendum veritatem*, are Iudges of the fact, *Co. 9. 12. a. Dorsmans case, & 25. & c. Strata Marcellas case*, and infinite other authorities, they are so farre Iudges of the fact, that although the partes bee estopped to averre the truth, yet these Iudges of the fact shall not be so estopped, because they are upon their Oath, *Co. 2. 4. b. Goddards case, Co. 4. 53. a. Raw-bins case, 1. Henr. 4. 6. a. & c.* They are so far Iudges of the fact, that they are not to leave any part of the truth of the evidence to the Court,

Co. 1. 56. b. *Chauncellor of Oxforde case*, nay they may finde releases and other things of their knowledge not given in evidence, 8. *ass. plac.* 3. Co. 10. 95. b. *Doctor Leyfields case*, what is done by Iudges, shall not bee tryed by Iurors; Co. 9. *Strata Marcellas case* 30. Ergo è *converso*; but if any doubt in law ariseth upon the evidence, there is a proper remedie by bill of exception by the statute of *2. cap. 30.* which Co. 9. *Dowmans case*, fol. 13. a. saith to be in affirmance of the ancient Common-law, as to this point of law, the Iudges of the law are Iudges of the validitie of the evidence, but under favour not of the truth of the fact, as it is set forth in the answer; if the Iudges of the law doe erre in matter of law, the party grieved hath his remedie by writ of error, but hee is not punishable if practise or misdemeanor doe not appeare, 2. *Rich.* 3. fol. 9. 10. *Fitz Natur. br.* 243. E. 27. *ass.* 18. 4. *Henr.* 6. and other bookes by the same reason the Iudges of the fact, if they goe according to their conscience as our question is stated, if the Iury in this case goe contrary to their evidence, the Common-law gives a full remedie by attainte, wherein the judgement is most heavie if the Iurors have done amisse as I said before to another question, yet in this action the law gives credit to the verdict before

fore it be falsified, for if a judgement be given up-
on this verdict and after an attainte is brought,
no *super sedes* can bee in this writ to hinder the
partie who recovered from his execution, 5. *Henr.*
7. 22. b. 33. *Henr.* 6. 21. otherwise in a writ of
error.

Your Lordships therefore may see what faith
is given to verdicts at Common-law, I observe
the notable case of 7. *Henr.* 4. 41 b. where *Gascoigne*
answereth the King that would give judgement
contrary to his private knowledge.

As for the next part of these two questions, it
was the late height of punishments, and the draw-
ing of more causes to that Court, then in former
times, moved this debate, out of the statute of
3 *Henr.* 7. cap. 1. concerning this Court. I make
these observations, first, that the Iudges of that
Court according their discretion may examen
Verba Statut. great offences, secondly, that they may punish
according to the demerits of delinquents after
the forme of the statute thereof made, thirdly, in
like manner & forme as they should or ought to
be punished if they were convict by the due order
of the Common-law For the first, what discretion
this is, we finde in our books, Co. 5 fol. 100. *Rookes*
case, discretion is to proccede within the bounds
of

of law and reason, at Common-law a Man in a Leete is fined but in ten groats for a light blondshed; in the *Castle-chamber* a Noble-man for an offer of a switch to a person inferior to him, upon provocation perhaps given, was fined in foure thousand pound, committed to long imprisonment, and low acknowledgements were imposed on him. For the second and third observations, if men of quality and ranke were pillored, papered, stigmatized, and fined to their destruction, in cases where if they had beene convicted by due order of law, they could not be so punished by any law or statute, I humbly offer to your Lordships sad and grave consideration.

Lo. Visct.
Clanmorris.

And whether these courses be warranted by the said statute of 3. *Henr. 7. cap. 1.* or by any other law or statute of force in this Realme, and if all Iurors bee brought to the *Castle-chamber*, what shall become of that great and noble tryall, by which all the matters of our law regularly are tryable; And so I conclude that the answers to these two questions are not satisfactorie.

Whether in the Censures in the *Castle-chamber*, regard be to be had to the words of the great Charter, viz, *salvo contenemento, &c.*

18. quest.
18. Answ.

I con-

I conceive that in the Censures in the Castle-chamber, regard is to bee had to the words of the great Charter, viz. *Salvo contememento*, &c. although in the great Charter, and in the statute of *Westmunst. 1. cap. 6. amerciamantum* and *misericordia* are expressed and not fines or *redemptio*, because a fine and an amerciament are in the old yeare bookes used promiscuously as *Synonima*, for one and the same thing, and therefore in 10. *Edw. 3. fol. 9. & 10.* The Iurors of the *Abbot of Ramses Leete*, being sworne, and refusing to present the articles of the *Leete*, were amerced and there it is resolved, because all did refuse to present, all shall be amerced, but when the same shall be imposed or appeared, shall bee imposed severally upon each of them *secundum quantitatem delicti salvo contememento suo*, yet the summe there imposed was *revera à fine*, and not an amerciament as an amerciament is now taken, and here with agrees, 4. *Elix. Dy. 211. b.* in these words (if the Iurors of a *Leete* refuse to present the articles of the *Leete*, according to their Oath, the Steward shall assesse a fine upon every of them) and *Godfries case, 11. Rept. fol. 42. b. 43. a.*

Secondly if by intendment of law, as the law was conceived at the time of the making of the statutes

statutes of *Magna Charta* and *VVeistm.* fines and amerciaments had not beene or taken to be *Synonyma*, the feazors of those acts would not have so carefully provided remedy in case of amerciaments, which were alwayes moderate, and wherein à *moderata misericordia* did lie for all men, *ab enumeratione partium*, viz. *Comites & Barones non amercientur & miles & liber homo amercientur & salvo contenemento suo, mercator salva merchandiza sua, Villanus salvo VVainagio, Clericus salvo Laico, Feodo, &c.* and have thought of no redresse or moderation of fines, which are more grievous, and of late times infinitely swolne above amerciaments, for in 19. *Edw.* 4. fol. 9. and 21. *Edw.* 4. fol. 77. the amerciament of an Earle Baron, &c. is but five pounds, and of a Duke ten pounds, yet a Barons ancient fee or livelyhood consisteth of foure hundred marks land *per annum*, an Earles of foure hundred pounds, a Dukes of eight hundred pounds *per annum*.

Thirdly, amerciaments imposed upon those that have the administration of iustice or execution of the Kings writs, for their Commission or Omision, contrary to their dutie are out of the letter of *Magna Charta*, are indeede fines and to bee imposed and taxed by the Iudges, yet are they called

miserericordia, because great moderation and mercy must be used in taxing of them, *Grifleyes case*, 8. Rep. fol. 48. a. b.

Fourthly, in case fines bee not within these words of *Magna Charta*, *amercietur salvo contemento*, &c. yet ought they by law to be reasonable and not excessive, for every excesse is against law, *excessus in re qualibet, jure reprobatur communi*, as excessive distresse is prohibited by the Common-law 41. Edw. 3. fol. 26. So is excessive and outrageous ayde, as appeares by the statute of *VVestm.* 1. cap. 35. and by *Glanv.* 1. 9. fol. 70. an assize lies for often distrayning because it is excessive, and therefore against law an excessive fine, at the will of the Lord is an oppression of the people, 14. Henr. 4. fol. 9. If tenant in Dower have rich villains or tenants at will and shce by excessive taxes or fines make them mendicants, it is waste in the eye of the law, 16. Henr. 3. Fitz. waste 135. Register Judiciale, fol. 25. If the fines of Coppy-holders be uncertaine, the Lord of the Mannor, cannot exact unreasonable and excessive fines, & the unreasonableness of the fines shall bee determined by the Judges having respect to the value of the Coppy-hold, 4. Rep. fol. 27. b. The King before the making of *Magna Charta* had *rationabile relium* of noblemen
and

and it was not reduced to any certaintie, yet ought it to have beene reasonable and not excessive, *Co. institut. 83. b.*

They say that in a legall construction, the statute of *Magna Charta*, in which the words *salvo contentemento* are mentioned, is onely to be understood of amerciaments and not of fines, yet where great fines are imposed *in terrorem*, upon the reducements of them, regard is to bee had to the ability of the persons.

Now whereas they alléage that upon the reducements of fines, regard is to bee had to the estate of persons, I humbly conceive that makes but little, eyther for the ease or securitie of the subject, or the providence or wisdom of the law, for that such reducements are not grounded upon any rule of law, but rest meerely in the Kings grace and bountie, which if the Prince should withdraw, and leave the subject to the law, in what case he is in, I leave it to your Lordships. If there bee no rule in this case, it may rest in the arbitrarie will of foure or five persons in that Court to destroy any man, & in their will to reduce as they please, but never to reduce before confession of the sentence which is destructive, wherein perhaps there is no infallibilitie, *Magna Charta, cap. 29. Nullus*

liber homo aliquo modo destruatur, &c. and so I conclude as to this answer.

19. quest.

19. Answ.

This answer as it is here is sufficient, yet contrary to their answer; to the first question upon the same point, and so contrary, that both are incompatible.

20. quest.

20. Answ.

Gen. cap.

1. v. 31.

Gen. cap.

1. v. 27.

My Lords, I am come to the life of man, after that God concluded the worke of the whole world saying to every particular *¶ erant valde bona*, to make the worke compleat *creavit hominem ad imaginem ¶ similitudinem suam*. Aristotle in his treatise *de natura animalium* saith that *unum vivens est magis dignum*; which is man, that creature which alone is more perfect and noble then all the world besides. The Common-law of the land hath three darlings, life, libertie, and dower, the former recited statutes give protection to three things, to life, estate, and libertie, the life of man is the eldest Child admitted to the favour of the law, and the first and chiefe within the protection of these statutes, the other two are but ministers and servants unto it, the tryall of this life by the law and statutes afore said is regularly *judicium parium*, to multiply cases upon so plaine a learning, were but passe time, or wast time, your Lordships have other businesse of weight and consequence: the prooffe which

which taketh away this life with infamy, which corrupts the bloud of him and his posterity, defeats the wife and innocent Children of their fame and substance, surely ought to be cleare and convincing prooffe.

The case of an approver is the onely case wee finde in our law, where a person infamous may accuse another for his life, this accusation cannot take away the life of any man, otherwise then by a legall tryall, *viz.* by a tryall of Iurors, who ought to have other good prooffe before they finde a subject guilty, or by both, wherein the approver hazards his owne life, which is sacred unto him by the law. This approver is not received in another felony, or treason then he himsele is guiltie of by confession, of the fact, nor for his reliefe, after hee commits the crime confessed, *Stamford pleas of the Crowne, fol. 142. 143.* for notorious rebels or malefactors, I finde not any booke in law to give countenance unto such testimony. I finde in the fourth article of the Kings printed booke of instructions, that such testimony shall not be pressed when any man stands upon tryall of his life. The Iudges doe answer well to one part, *viz.* that such testimony is not convincing, but they goe further that the testimony of such persons, not condemned
con-

concurring with other prooffe or apparant circumstance may bee pressed upon the tryall of a man for his life; the said Article in the Instructions saith it shall not be pressed at all, no law warrants such pressure.

It is quite different from the case of an approver, who confesseth himselfe guiltie, and who is limited to the crime whereof he is guiltie, a Rebell is left at large to prove any crime, nay the reliefe of himselfe.

The testimony mentioned in the question differs in all things from the approver, therefore they cannot bee resembled; the concurrence of such testimonie with other proofes is not materiall, for other prooffe will doe the deede without this bad concurrence, and so will a violent presumption, as if two goe safe into a Roome, one of them is found stabbed to death the other may suffer, this presumption is inevitable the law of God, the lawes and statutes of the Realme protect and preserve the life of man, it were therefore hard to take away by circumstance such a reall and noble essence. This concurrence marrs the evidence, it helps it not. If one gives false testimonie once by the ancient law, his testimonie shall never be received againe, *Leges Canusi Regis;*

Lamb.

Lamb. Saxons lxxxv. fol. 113. p. 34. much lesse where they are notorious ill doers, this and the reason and ground of this question already opened, will I hope give your Lordships satisfaction.

For this question, I will state it without any tenure reserved by expresse words as the question is put, whether the reservation of rent, or Annuall summe will rayse this to bee a tenure *in capite*; I conceive it will not for sundrie reasons. First from the beginning there have beene Fayres and Markets, and no president, booke-case, or Record, to warrant the new opinion in this Case before *Trinitie terme 1639.* in the Court of wards. Secondly the practise of that Court was alwayes before to the contrary in the same, and the like Cases. Thirdly, it is a thing as the question is of new creation, and never *in esse* before, for this see the Bookes of 3. *Henr. 7. 4. 12. Henr. 7. 19. 15. E. 4. 14. 46. E. 3. 12. 21. Henr. 6. 11. Stamford prerogative 8.*

21. *quest.*
21. *Answ.*

Therefore there is no necessitie of a tenure thereof; upon the Conquest it was necessarie that all lands should be held by some tenure for the defence of the kingdome.

48. *Edw.*
3. 9. 33.
H. 6. 7. 8.
Hen. 7.
12.
Co. 6. 60
Co. 9.
123.

1. The statute of *Quia emptores terrarum, &c.* *prerogativa Regis* speake of Feoffator, Feoffatores, &c.

Uc. therefore a tenure I meane this tacite or implied tenure was originally onely intended of Land.

2. The King may reserve a tenure in all things not mainerable by expresse reservation or Covenant, 44. *Edw.* 3. 45. *Fitz. natur. breuium*, 263. *Uc.* but that is not our Case.

3. Heere it is left to construction of Law, which is *aquisitum Index*, and lookes upon the nature of things, and therefore in Cases that include Land, or where land may come in lieu thereof, a tenure may be by implication, as a mesnalty a reversion expectant upon an intayle & the like, 10. *Edw.* 44. & 41. *Edw.* 3. 7. *Fitz Grants*, 102. and divers other bookes.

4. No tenure can be implied by reason of a rent, if the rent be not distreynable by some possibility of its owne nature upon the thing granted, as appeares by 5. *Henr.* 7. 36. 33. *Henr.* 6. 35. 40. *Ed.* 3. 44. 1. *Henr.* 4. 1. 2. 3. *Fitz. cessabit.* 17.

5. The distresse upon other land is the Kings meere prerogative like the case of *Buts Co.* 6. 25. a distresse may be for rent in other land by Covenant.

6. This is no rent because it issueth not out of land.

7. If

7. If the Patentee here had no land, there can be no distresse in this case.

8. This is a meere priviledge, it issueth out of no lands, and participates nothing of the nature of land, all the cases of tenures in our bookes are eyther of land or things arising out of land, or some way or other of the nature of land, or that may result into land, or that land by some possibilitie may result into it; Therefore I humbly conceive that new opinion is not warranted by law or president.

These *My Lords*, are in part the things, which satisfied the house of Commons in all the matters aforesaid, they are now left to the judgement and Iustice of your Lordships.



QUESTIONS PROPOUNDED
IN
PARLIAMENT
AND

Declarations of the Law thereupon
in Parliament.

Question

1.



Whether the Subjects of this kingdome bee a free people, and to be governed onely by the Common-lawes of England, and statutes of force in this kingdome.

Declaration.

The subjects of this his Majesties kingdome of Ireland, are a free people, and to be governed onely according to the Common-law of England, and Statutes made & established by Parliament in this kingdome of Ireland, and according to the lawfull customes used in the same.

Question

2.

Whether the Iudges of this land doe take the Oath of Iudges, and if so, whether under pretext of any Act of State, Proclamation, writ, letter or direction under the

the great or pri-vie Seale or pri-vie Signet or Letter or other Commandment from the Lord Lieutenant, Lord Deputy, Iustice, Iustices, or other chiefe Governor, or Governors of this kingdome, they may hinder, stay, or delay the suite of any subject, or his Iudgement or execution thereupon, if so, in what cases, and whether if they doe hinder, stay or delay such suite, judgement or execution thereupon, what punishment doe they incurre for their deviation and transgression therein?

That Iudges in Ireland ought to take the Oath of the Iustices or Iudges declared and established in severall Parliaments of force in this kingdome and the said Iudges or any of them, by colour, or under pretext of any act of state, or proclamation or under colour, or pretext of any writ, Letter, or direction under the great Seale, privie Seale, or privie Signet from the Kings most Excellent Majestie, or by colour or pretext of any Letter or Commandment from the chiefe Governor or Governors of this kingdome ought not to hinder or delay the suite of any subject, or his judgement, or execution thereupon and if any letters, writs, or commaunds come from his Majestie or any other, or for any other cause to the Iustices, or to other deputed to doe the law and right according to the usage of the Realme in distur-

Declarat
on.

bance of the law, or of the execution of the same, or of right to the parties, the Iustices and other afore said ought to proceed, and hold their Courts, and processess where the pleas and matters bee depending before them, as if no such letters, writs, or commandments were come to them, and in case any Iudge, or Iudges, Iustice, or Iustices bee found in default therein, he or they so found in default ought to incurre and undergoe due punishment according the law, and the former declarations and provisions in Parliament in the case made and of force in this kingdome, or as shall be ordered, adjudged, or declared in Parliament. And the Barons of the Exchequer, Iustices of assize, and Goale-delivery if they be found in default as afore said, it is hereby declared that they ought to undergoe the punishment afore said.

Question

3.

Whether the Kings Majesties privie Councell eyther with the chiefe Governor, or Governors of the kingdome, or without him or them, be a place of Iudicature, by the Common-lawes, and wherein causes betweene party, and party for debts, trespasses, accompts, possession, or title of Lands, or any of them, and which of them may bee heard and determined, and of what Civill causes they have jurisdiction, and by what law, and of what force

is

is their order or decree, in such cause or any of them?

That the Councell-table of this Realme eyther with the chiefe Governor or Governors is no Iudicatorie wherein any action reall, personall, popular, or mixt, or any suite in the nature of the said actions or any of them can or ought to bee commenced, heard, or determined, and all proceedings at the Conncell-table, in any suite in the nature of any of the said actions are voyde (especially causes particularly provided for) by expresse acts of Parliament of force in this kingdom onely exempted. Declaration.

The like of the chiefe Governor above.

The proceedings before the chiefe Governor, or Governors alone in any action, reall, personall, popular, or mixt, or in any suite in the nature of any of the said actions are *Coram non Iudice* and voyde. Question.
4.
Declaration.

Whether grants of Monopolies be warranted by the law, and of what, and in what cases, and how and where, and by whome are the pretended transgressors against such grants punishable? and whether by fine, mutillation of members, imprisonment, losse and forfeiture of goods or otherwise and which of them? Question.
5.

All grants of Monopolies are contrary to the lawes Declaration.
on.

lawes of this Realme, and therefore voyde, and no subject of the said Realme ought to bee fined, imprisoned, or otherwise punished for exercising or using their lawfull liberty of a subject, contrary to such grants.

Question

6.

In what cases the Lord Lieutenant, Lord Deputie, or other chiefe governor or governors of this kingdome and Councell may punish by fine, imprisonment, mutillation of members, pillory or otherwise, and whether they may sentence any to such, the same, or the like punishment for infringing the commaunds of or concerning any proclamation, of and concerning Monopolies, and what punishment doe they incurre that vote for the same?

Declaration.

The Lord Lieutenant, Lord Deputy, or other chiefe governor or governors, and Councell of this Realme, or any of them, ought not to imprison any of his Majesties subjects, but onely in Cases where the Common-lawes or statutes of the Realme doe enable and warrant them so to doe, & they ought not to fine, or to censure any subjects in mutillation of members, standing on the pillory, or other shamefull punishment in any case, at the Councell-table, and no subject ought to be imprisoned, fined, or otherwise punished for infringing any commaunds, or proclamation for the support, or countenance of Monopolies: And if in
any

any case, any person or persons shall bee committed by the commaund or warrant of the chiefe governor, or governors and privie Councell of this Realme, or any of them, that in every such case, every such person or persons so committed, restrayned of his, or their libertie, or suffering imprisonment upon demaund, or motion made by his or their Conncell, or other imployed by him or them for that purpose unto the Iudges of the Court of Kings-bench, or Common-pleas, in open Court, shall without delay upon any pretence whatsoever, for the ordinarie fees usually payed for the same have forthwith granted unto them, or him a writ or writts of *Habeas Corpus*, to be directed generally to all, and every Sheriffe, Gaoler-minister, officer or other person, in whose custody the party or parties so committed or restrayned shall be, shall at the returne of the said writ, or writs, and according to the commaund thereof upon due and convenient notice thereof given, unto him at the charge of the party or parties who requireth or procureth such writ or writs, and upon securitie by his or their owne Bond, or Bonds given to pay the charge of carrying backe the prisoner, or prisoners, if hee or they shall bee remanded by the Court, to which he or they shalbe brought, as in
like

like causes hath beene used, such charges of bringing up and carrying backe the prisoner or prisoners to be alwayes ordered by the Court, if any difference shall arise there about, to bring, or cause to be brought the body, or bodies of the said partie, or parties so committed, or restrayned unto & before the Iudges, & Iustices of the said Court from whence the same writ or writs shall issue in open Court, & shall then likewise certifie, the true cause of such his, or their detayner, or imprisonment, & and thereupon the Court after such returne made, and delivered in open Court, shall proceed to examine and determine, whether the cause of such commitment, appearing upon the said returne be just and legall or not, and shall thereupon doe what to justice shall appertayne, eyther by delivering, bayling, or remanding the prisoner, or prisoners.

Question
7.

Of what force is an act of state, or proclamation in this kingdome to bind the libertie, goods, possessions, or inheritance of the Natives thereof, whether they or any of them can alter the Common law or the infringers of them, loose their goods, chattels, or leases, or forfeyte the same by infringing any such act of state, proclamation or both, and what punishment doe the sworn Iudges of the law, that are privy Councillors, incurre that vote for such acts and execution thereof?

An

An act of state, or proclamation in this kingdom, cannot bind the libertie, inheritance, possession, or goods of the subjects of the said kingdome, nor alter the Common-law, and the infringers of any such act of state, or proclamation ought not to forfeite lands, leases, goods, or chatels for the infringing of any such act of state or proclamation. And the Iudges of the law who doe vote for such acts of state, or proclamation are punishable, as breakers and violaters of their Oathes of Iudges. Declaration.

Are the subjects of this kingdome, subject to the mar- shall law, & whether any man in time of peace, no enimie being in the field, with banner displaid, can be sentenced to death, if so, by whom, and in what causes? if not, what punishment doe they incurre, that in time of peace execute marshall law? Question 8.

No subject of this kingdome ought to bee sentenced to death, or executed by Marshall-law in time of peace, and if any subject be so sentenced, or executed by marshall-law, in time of peace, the authors & actors of any such sentence or execution, are punishable by the law of the land for their so doing, as doers of their owne wrong, and contrarie to the said law of the land. Declaration.

Whether voluntary Oathes taken freely before arbitrators for affirmance, or disaffirmance of any thing, or Question 9.

for the true performance of any thing be punishable in the Castle-chamber, or any other Court, & why or wherefore?

Declara-
tion.

No man ought to bee punished in the Castle-chamber, or in any other Court, for taking a voluntary Oath before arbitrators for affirmance or disaffirmance of any thing, or the true performance of any thing in civill causes, nor are the arbitrators before whom such voluntary oathes shall be taken punishable.

Question
10.

VVhy and by what law, or by what rule of policie is it that none is admitted to reducement of fines, and other penalty in the Castle-chamber or Councell-table untill he confesse the offence for which he is censured; when as revera hee might bee innocent thereof, though suborned proofes, or circumstance might induce a Censure?

Declara-
tion.

By the lawes and statutes of the Realme, no man is bound, or ought to be compelled to acknowledge the offence layd to his charge, or the justnesse of any censure past against him in the Castle-chamber, or at the Councell-table, nor ought to bee detayned in prison, or abridged of his liberty, or the reducement of his fine, stayed or delayed, untill he doe acknowledge such offence or the iustnesse of such censure. And it is further declared that no such inforced or wrested confession, or acknowledgment can or ought to debarre, or hinder any subject

ject from his Bill of reversall, or review of any sentence or decree past, or conceived against him in the Castle-chamber, or in any other Court.

Whether the Iudges of the Kings-bench, or any other Judge of Gaole-delivery, or of any other Court, and by what law, doe or can deny the Copies of indictments of felony or treason, to the parties accused contrary to the law. Question 11.

The Iudges of the Kings-bench, or Iustices of Gaole-delivery, or the Iudges of any other Court, ought not to deny Copies of indictments of felonies, or treason to the parties indicted. Declaration.

What power hath the Barons of the Court of Exchequer, to raise the respite of homage arbitrarily, to what rate they please, to what value they may raise it, by what law they may distinguish betweene the respite of homage upon the diversitie of the true value of the Fees; when as Escuage is the same for great and small Fees and are proportionable by Parliament? Question 12.

The Barons of the Exchequer ought not to raise the respite of homage above the usuall rates appearing in and by the course and presidents of that Court continued untill the yeare of our Lord God, 1637. and the raising thereof since that time was arbitrary and against the law, and the Barons of the Exchequer, ought not to distinguish between the respite of homage upon any Declaration.

Question
13.

diversity of the true values of the knights Fees.
*VV*hether it be censurable in the subjects of this kingdome to repaire into England to appeale to his Majesty for redresse of injuries, or for other lawfull occasions; if so, why, & what condition of persons and by what law?

Declara-
tion.

The subjects of this kingdome may lawfully repayre into England, to appeale to his Majesty for redresse of injuries, or for other their lawful occasions; & for their so doing, ought not to be punished or questioned upon the statute of 5. of K. Rich. the 2. nor by any other law, or statute of force in this kingdome (eminent officers & ministers of state, Commanders & souldiers of his Majesties Army. The Iudges and ministers of his Majesties Courts of Iustice, and of his highnesse Revenue and customes, whose attendance is necessary requisite, by the lawes & statutes of the realme only excepted.)

Question
14.

*VV*hether Deanes or other dignitaries of Cathedrall Churches be properly and de mero jure donative by the King, and not Elective or collative; if so, why, and by what law, and whether the Confirmation of a Deane de facto of the Bishops grant be good and vallid in law, or no? if not, by what law?

Declara-
tion.

Deaneries or other Ecclesiasticall dignities of this Realme, are not de mero jure donative, but some are donative, and some elective, and some are colla-

tive

tive, according to their respective foundations, and the confirmation of the Bishops grant by a Deane *de facto* having actually *stallum in Choro, & vocem in Capitulo*, together with the Chapter is good in law.

Whether the issuing of Quo-warrantoes, out of the Kings-bench, or Exchequer against Borroughs, that anciently and recently sent Burgeses to the Parliament to shew cause why they sent Burgeses to the Parliament, be legal? if not what punishment ought to be inflicted on those that are or hath beene the occasioners, procurers, and Iudges of, and in such Quo-warrantoes? Question 15.

The issuing of Quo-warrantoes out of the Court of Kings-bench, Court of Exchequer, or any other Court against Boroughs, that anciently or recently sent Burgeses to the Parliament, to shew cause why they sent Burgeses to the Parliament, and all the proceedings therein are, *coram non Iudice*, illegal and voyde, and the right of sending Burgeses to the Parliament is questionable in Parliament only, and the occasioners, procurers, and Iudges in such Quo-warrantoes and proceedings are punishable as in Parliament shall be thought consonant to law and Iustice. Declaration.

By what law are Iurors, that give verdict according to their conscience, and are the sole Iudges of the fact, censured in the Castle-chamber in great fines, and sometimes pillored Question 16.

pillored with losse of eares, & boared through the tongue, and marked sometimes in the forehead with a hot Iron, and other like infamous punishment?

Declara-
on.

Jurors are the sole Iudges of the matter in fact, and they ought not for giving their verdict to bee bound over to the Court of Castle-chamber, by the Iudge or Iudges, before whom the verdict was, or shall be given.

Question

17.

By what law are men censurable in the Castle-chamber, with the mutillation of members, or any other brand of infamy, and in what cases, and what punishment in each case there is due, without respect of the qualitie of the person or persons?

Declara-
on.

No man ought to bee censured in the Castle-chamber, in the mutillation of members, or any other brand of infamy, otherwise, or in other cases then is expressely limited by the statutes of this Realme in such cases provided?

Question

18.

Whether in the censures in the Castle-chamber, regard be to be had, to the words of the great Charter, viz. Salvo Contenemento, &c.

Declara-
tion.

In the censures of the Castle-chamber, especial-ly regard ought to bee had to the words of the great Charter, viz. *Salvo Contenemento, &c.*

Question

19.

Whether if one that steales a Sheepe, or commits any other felony, and after flieth the course of Iustice, or lieth in

in woods or mountaines upon his keeping, be a Traytor, if not, whether a proclamation can make him so.

A Felon who flies the course of Iustice, & lieth in woods, mountaines, or elsewhere upon his keeping is no Traytor, and a proclamation cannot make him a Traytor. Declaration.

Whether the testimonie or evidence of Rebels, Traytors, protected Theeves, or other infamous persons bee good evidence in law, to be pressed upon the tryals of men for their lives, or whether the Iudges, or Iurors ought to be Iudge of the matter in fact? Question 10.

The testimony of convicted, or protected Rebels, Traytors, or Fellons, is no sufficient evidence in law upon the tryall of any person, for his life, and the credit of the testimony of persons accused or impeached, and not convicted of felony or treason, ought to be left to the Iury who are sole Iudges of the truth, and validity of the said testimony. Declaration.

By what law are Fayres and Markets to bee held in Capite, when no other expresse tenure bee mentioned, in his Majesties Letters-patents, or grants of the same Fayres and Markets, although the rent or yearely summe be reserved thereout? Question 11.

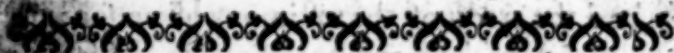
The King grants Lands to be held in free and Common-socage, as of a Castle, or Mannor by Letters. Declaration.

Letters-patents under the great Seale, and by the
same Letters-patents, or by other Letters-patents,
grants a Fayre and Market, reserving a yearly rent
or summe without expressing any tenure as to the
said Fayre or Market, the said Fayre or Market, is
not held by knights-service *in Capite* or otherwise
in Capite.

Copia vera,

Ex per Phil: Fern: Cleric. Parl. Com.

FINIS.



Faults escaped.

The 9. l. 19. instead of caules read Cafes, p. 40. l. 6. for the, reade their, p.
44. l. 10. for wages, reade wayes, p. 56. l. 17. for best, reade least, p. 57.
lin. 18. for Rottoman, reade Hotoman, ibid. l. 21. for Master Sleyden, say
Selden, p. 61. l. 3. &c is omitted before that p. 63. l. 19. for strike, r. stick, p. 64.
l. 14. for Primes case say Princes case, p. 67. l. ultima for Strata Marclad, say
Strata Marcella: p. 68. l. yk. for here, say there. p. 70. l. 11. for sit, say Litt. ibid.
l. 2. for give say gives, p. 70. l. 12. for writ, say writs. p. 72. l. 1. for this, the, p.
77. l. 13. for as say or, p. 86. for Willielmi Collet, say Willielmus Collet. p.
87. l. 12. for Monopolites, Monopolists. p. 88. l. 8. for Cod. say C. p. 93. l. 19.
for promissum est, say provisum est, p. 94. l. 2. for promissum, say provisum
p. 97. l. 21. for the, say this. p. 109. l. 3. for Thorn bow, say Thornborow, pag.
110. l. 7. for Placit. Com. say Plo. Com. ibid. l. 19. for partes say parties,
p. 121. l. 7. *non* is omitted, p. 122. l. ultim. for relivnum, say relevium.

